82-1367

No.

Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ROADWAY EXPRESS, INC.

Petitioner,

v.

LAWRENCE G. WARREN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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February 14, 1983

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QUESTIONS PRESENTED

1. Whether the Georgia courts unconstitutionally failed to give full faith and credit to Tennessee law in awarding respondent Georgia workers' compensation benefits when he had already received such benefits under Tennessee law, which constitutes an irrevocable election to proceed under that state's law.

2. Whether the Georgia courts acted unconstitutionally in awarding Georgia workers' compensation benefits to respondent since Georgia does not have a significant contact or aggregation of contacts with the parties and the occurrence or transaction involved in this case.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

OPINION BELOW

The opinion of the Court of Appeals of Georgia is reported at 163 Ga. App. 759, 295 S.E.2d 743 (1982). There is no reported opinion of the Supreme Court of Georgia, which denied petitioner's application for certiorari on November 16, 1982.

STATEMENT OF JURISDICTION

The opinion of the Georgia Court of Appeals was entered on September 16, 1982. Petitioner's motion for rehearing was denied by the Georgia Court of Appeals on

October 6, 1982. Petitioner subsequently filed its application for certiorari to the Georgia Supreme Court, which was denied on November 16, 1982. Copy of the opinion of the Georgia Court of Appeals and other pertinent opinions and orders are set forth in Appendix A, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions involved in this case are set forth in Appendix B, *infra:* U.S. Const. art. IV, §1; U.S. Const. amend. XIV, §1; Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411); Official Code of Ga. Ann. §34-9-261 (Ga. Code Ann. §114-404); Tenn. Code Ann. §50-914; Tenn. Code Ann. §50-917; Tenn. Code Ann. §50-1005; and Tenn. Code Ann. §50-1007.

STATEMENT OF THE CASE

I. PROCEEDINGS BELOW.

Lawrence G. Warren (hereinafter "Claimant") was injured while working for Roadway Express, Inc. on October 20, 1978 in Indiana. Claimant had been living in and working out of Tennessee. He elected to come under the Workmen's Compensation Laws of the State of Tennessee. An agreement was entered into on November 2, 1978, and it was filed and executed with the Workmen's Compensation Division of the Department of Labor of Tennessee. Benefits were paid pursuant to this agreement for payment of compensation under Tennessee law until October 12, 1979. Thereafter, Claimant filed a workers' compensation claim in Georgia for the very same accident. A hearing was held and Administrative Law Judge H. Grady

Almand, Jr. of the Georgia Board of Workers' Compensation awarded Claimant benefits on August 6, 1980. Roadway Express, Inc. appealed this award to the Full Board of Workers' Compensation of Georgia which thereafter affirmed the award on January 8, 1981. Roadway Express, Inc. properly appealed the Full Board award to the Superior Court of Fulton County, Georgia. By order dated December 1, 1981, the Honorable Sam Phillips McKenzie, Fulton Superior Court Judge, affirmed the decision of the Georgia Board of Workers' Compensation.

On December 31, 1981, Roadway Express, Inc. filed its application for appellate review to the Supreme Court of Georgia. By order dated January 7, 1982, the Supreme Court of Georgia ordered that this application be transferred to the Court of Appeals of Georgia. The Court of Appeals granted Roadway's application for appellate review by order dated January 26, 1982. Pursuant to this order, Roadway Express, Inc. filed its notice of appeal to the Court of Appeals on January 29, 1982.

The Court of Appeals of Georgia issued its opinion on September 16, 1982, which upheld the exercise of jurisdiction of the Georgia Board of Workers' Compensation over this claim and affirmed the order of the Superior Court of Fulton County, Georgia. Roadway Express, Inc. timely filed a motion for rehearing which was denied by the Court of Appeals on October 6, 1982. Roadway Express, Inc. subsequently filed its application for certiorari to the Supreme Court of Georgia on October 26, 1982. Roadway's application for certiorari was denied by the Supreme Court of Georgia on November 16, 1982.

II. STATEMENT OF FACTS.

Claimant was first employed as an over the road truck driver by Roadway Express, Inc. on March 23, 1963. At

that time, Claimant operated out of Atlanta, Georgia. In 1967, Claimant was injured in an on the job accident and received workers' compensation benefits from 1967 until 1971. He did not work for Roadway Express during this four-year period of time. During the same period, Roadway Express changed its method of operation from two drivers per truck to one, and when Claimant was reemployed after his disability ended he was given a choice of different terminals to work out of. Claimant had the choice of continuing to operate out of Atlanta, Georgia or of operating out of other designated localities. Claimant's choice of operating out of Nashville, Tennessee was honored.

In 1971, when Claimant's physical disability from his 1967 on the job accident ended, he was required to take a physical examination in Nashville, Tennessee as a prerequisite to reemployment with Roadway. This physical examination was required by the Interstate Commerce Commission for over the road drivers. From 1971 on, claimant not only worked out of the Nashville terminal but also moved his family and residence to Tennessee. On the date of the accident (October 20, 1978) and for two years before, Claimant exclusively drove the Nashville to Chicago route, a run on which he had voluntarily bid.

Claimant sustained the injury in question on October 20, 1978 in the State of Indiana while he was on his regular run to Chicago from Nashville. Claimant signed workers' compensation forms providing for the voluntary payment of workers' compensation benefits under the Tennessee law and admitted accepting benefits under the Tennessee Workmen's Compensation Statute. These forms were approved by the Workmen's Compensation Board in Tennessee. Benefits under Tennessee workers' compensation law ceased on October 12, 1979 when Dr. Raymond E.

Gilmer, Jr. stated that Claimant was no longer disabled and should return to work.

III. FEDERAL CONSTITUTIONAL QUESTIONS RAISED BELOW.

Federal constitutional questions were first raised by Roadway Express, Inc. at the initial evidentiary hearing before Administrative Law Judge H. Grady Almand, Jr. of the Georgia Board of Workers' Compensation on March 11, 1980. Counsel for Roadway Express, Inc. made an oral motion to dismiss at the evidentiary hearing, with one of the grounds of the motion to dismiss stated at page 66 of the transcript of the hearing as follows: ". . . under the full faith and credit doctrine of the United States Constitution, we are entitled to full faith and credit of the Tennessee proceedings which are in evidence." Federal constitutional objections to the exercise of jurisdiction by Georgia over this workers' compensation claim were also raised in the letter brief from counsel for Roadway Express, Inc. to Administrative Law Judge Almand dated June 6, 1980. Judge Almand's award dated August 6, 1980 was the initial ruling in this workers' compensation claim, and he decided that the United States Constitution did not preclude Georgia from granting a second award of workers' compensation benefits to Claimant.

Federal constitutional issues under U.S. Const. art. IV, §1 and U.S. Const. amend. XIV, §1 were raised by Roadway Express, Inc. in its appeal of Judge Almand's award and all subsequent appeals of this workers' compensation case as set forth in the following documents filed by Roadway Express, Inc., which are a part of the record: (1) Notice of Appeal to the Full Board of Workers' Compensation of Georgia filed on September 5, 1980; (2) Brief of

Roadway Express, Inc. on appeal to the Full Board of Workers' Compensation of Georgia filed on September 22, 1980; (3) Supplemental Brief of Roadway Express, Inc. on appeal to the Full Board of Workers' Compensation of Georgia filed on October 24, 1980; (4) Roadway Express, Inc.'s Notice of Appeal to the Superior Court of Fulton County, Georgia filed on February 5, 1981; (5) Brief of Roadway Express, Inc. on appeal to the Superior Court of Fulton County, Georgia filed on July 10, 1981; (6) Application for Appellate Review filed on December 31, 1981 in the Supreme Court of Georgia; (7) Notice of Appeal to the Supreme Court of Georgia filed on December 31, 1981; (8) Notice of Appeal to the Court of Appeals of Georgia filed on January 29, 1982; (9) Motion for Reconsideration of Dismissal of Appeal of Appellant Roadway Express, Inc. filed in the Supreme Court of Georgia on April 16, 1982; (10) Brief of Appellant Roadway Express, Inc. on appeal to the Court of Appeals of Georgia filed on May 5, 1982; (11) Motion for Rehearing on appeal to the Court of Appeals of Georgia filed on September 27, 1982; and (12) Application for Certiorari to the Supreme Court of Georgia filed on October 26, 1982.

The Full Board of Workers' Compensation of Georgia entered its award on January 8, 1981 whereby it made the findings and conclusions of the Administrative Law Judge its findings and conclusions. The Honorable Sam Phillips McKenzie, Fulton Superior Court Judge, issued his order on December 1, 1981 affirming the decision of the Georgia Board of Workers' Compensation. The decision of the Court of Appeals of Georgia issued on September 16, 1982 addressed the Federal constitutional questions raised by Roadway Express, Inc. and held that the United States Constitution did not bar Claimant from seeking benefits under the Georgia Workers' Compensation Act. The Su-

preme Court of Georgia did not pass on the constitutional questions raised by Roadway Express, Inc. inasmuch as that Court denied the application for certiorari filed by Roadway Express, Inc. on November 16, 1982. Copy of all opinions and orders of the Georgia Board of Workers' Compensation and the Georgia appellate courts concerning the constitutional questions raised by Roadway Express are contained in Appendix A, *infra.*

ARGUMENT AND CITATION OF AUTHORITY

The Georgia courts have based their exercise of jurisdiction over this workes' compensation claim in Georgia upon Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411), which states in pertinent part the following:

> "Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependent shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this state or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: . . ."

Roadway Express, Inc. respectfully submits that the exercise of jurisdiction by the Georgia Board of Workers' Compensation in this claim was unconstitutional under the circumstances of this case. In allowing the Georgia Board of Workers' Compensation to exercise jurisdiction over this workers' compensation claim, the Georgia courts failed to give the required full faith and credit effect to the

holding of Tennessee law that Claimant's receipt of workers' compensation benefits under that state's law is an irrevocable election to proceed under Tennessee law, thus precluding a second award of Georgia workers' compensation benefits in this case. Authority from this Court, the most recent case being *Thomas v. Washington Gas Light Company,* 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed.2d 757 (1980), holds that Georgia must give full faith and credit to the "irrevocable election doctrine" of Tennessee law. Secondly, the facts indicate that Georgia has no significant contact or aggregation of contacts with the parties and the occurrence or transaction involved in this case, with the result that application of Georgia law in this workers' compensation case is unconstitutional under this Court's decisions in *Allstate Insurance Company v. Hague,* 449 U.S. 302, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981); *Home Insurance Company v. Dick,* 281 U.S. 397, 50 S.Ct. 338, 74 L.Ed. 926 (1930); and *John Hancock Mutual Life Insurance Company v. Yates,* 299 U.S. 178, 57 S.Ct. 129, 81 L.Ed. 106 (1936). Review by this Court is necessary since the decision of the Court of Appeals of Georgia affirming the exercise of jurisdiction by the Georgia Board of Workers' Compensation in this case is in direct conflict with constitutional authority set forth in decisions of this Court.

I.

THE GEORGIA COURTS ERRED IN FAILING TO GIVE FULL FAITH AND CREDIT TO THE PRIOR AWARD OF COMPENSATION ENTERED IN THE STATE OF TENNESSEE.

Tidwell v. Chattanooga Boiler & Tank Company, 163 Tenn. 420, 43 S.W.2d 221 (1931), and *True v. Amerail Corporation,* 584 S.W.2d 794 (Tenn. 1979) clearly hold that, *as a matter of Tennessee law,* a workers' compensation claimant makes an irrevocable election to proceed under the workers' compensation law of the state in which

he first receives benefits. The Full Faith and Credit Clause of the United States Constitution (U.S. Const. art IV, § 1) requires that the Georgia Board of Workers' Compensation give full faith and credit to the prior award of compensation entered into in the State of Tennessee. Accordingly, the Georgia Court of Appeals erred in affirming the Board's exercise of jurisdiction in this case as it could not constitutionally do so.

The requirements traditionally cited for the invocation of the Full Faith and Credit Clause of the United States Constitution are, first, the workers' compensation award must be the exclusive remedy in the state where it is rendered and second, the award must be final in the state where it is rendered. *Pettus v. American Air Lines, Inc.*, 587 F.2d 627 (4th Cir. 1978), *cert. denied*, 444 U.S. 883 (1979); *Gasch v. Britton*, 202 F.2d 356 (D.C. Cir. 1953); *Nagle v. Ringling Bros. and Barnum & Bailey Combined Shows, Inc.*, 386 F. Supp. 439 (S.D. Tex. 1974), *aff'd*, 529 F.2d 1350 (5th Cir. 1976). The unmistakable language of the doctrine of election expressed by the courts of Tennessee is that receipt of benefits under one state's law is an irrevocable election to proceed under that state's law. The record shows that claimant entered into an agreement under the workers' compensation laws of Tennessee and received benefits under that state's law. Under Tennessee law, receipt of those benefits is Claimant's exclusive remedy and his election of that remedy is irrevocable and final.

The most recent decision of this Court concerning the effect of the Full Faith and Credit Clause in workers' compensation proceedings is *Thomas v. Washington Gas Light Company*, 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed.2d 757 (1980). An analysis of this decision supports the conclusion in this case that the Georgia Board of Workers' Compensation must give full faith and credit to the Ten-

nessee compensation award and not exercise jurisdiction in this case.

There was no majority opinion in *Thomas*. However, the plurality opinion of four Justices advocated a balancing of interests test to determine whether a second governmental entity could constitutionally provide benefits to a workers' compensation claimant. By using this test, the plurality was persuaded that, under the facts of *Thomas,* the governmental interest of the second governmental entity (the District of Columbia) in providing benefits to *its own residents* outweighed the governmental interest of the State of Virginia in protecting its employers from excessive liability. A balancing of the state interests of Tennessee and Georgia in this case indicates that Tennessee has a much greater interest in application of its law than Georgia has in ignoring Tennessee's irrevocable election doctrine. Although Claimant has since moved to Florida, he was a Tennessee resident at the time of his accident and his work for Roadway Express at that time was exclusively between Nashville and Chicago. Claimant has not been a resident of Georgia since 1971. Therefore, Georgia does not have any governmental interest in him, as did the District of Columbia in the *Thomas* case. Claimant would not have any entitlement to governmental benefits in Georgia and was not even in transit through Georgia when the accident occurred. Roadway Express certainly has a right and interest to be governed by the law of Tennessee in this case, the law which Claimant originally chose to be governed by. Roadway Express and Claimant agreed to be governed by Tennessee law in this case by executing forms for payment of benefits in Tennessee, and their agreement to be bound by Tennessee law should not have been thwarted by the Georgia courts.

Additionally, the State of Tennessee certainly has a valid interest in not having its law thwarted by the courts

of the State of Georgia. There are several differences in compensation law in Georgia and Tennessee – *e.g.*, Tennessee has a different compensation rate [compare Tenn. Code Ann. §50-1007 and Official Code of Ga. Ann. §34-9-261 (Ga. Code Ann. §114-404)], Tennessee has a limit on the total amount of compensation which may be awarded while Georgia does not (Tenn. Code Ann. §50-1005), and Tennessee law provides for subrogation of the employer in a tort action against a third party while Georgia does not (Tenn. Code Ann. §50-914). These provisions of Tennessee law are more favorable to the employer than Georgia law, and the plurality in *Thomas* recognized that a state has a valid interest in placing a limit on the potential liability of companies that transact business in the state. The fact that Georgia provides more liberal compensation benefits is the logical reason that Mr. Warren chose to seek benefits in Georgia. He applied for Georgia benefits only after his Tennessee benefits were terminated on the basis of a change in condition, and his appropriate remedy is to seek benefits for a change in condition for the worse in Tennessee if he contends that he is still disabled. In short, an analysis of the governmental interests of Georgia and Tennessee in this case indicates that Georgia has no governmental interest in Claimant and Tennessee has a great governmental interest in having its law applied. Therefore, the plurality opinion in *Thomas* indicates that Georgia should have given full faith and credit to the Tennesee doctrine of irrevocable election and not awarded Georgia workers' compensation to Claimant.

The other opinions in *Thomas* also indicate that Georgia's exercise of jurisdiction in this workers' compensation case is unconstitutional under the Full Faith and Credit Clause. While the plurality rationale might be construed as indicating that a workers' compensation award is not in all instances entitled to *res judicata* effect, the con-

curring opinion of Justice White, joined by Chief Justice Burger and Justice Powell, states that a workers' compensation award should be entitled to *res judicata* effect under the Full Faith and Credit Clause. They concurred in the judgment only because the law of Virginia, in which the first compensation award was granted, lacked "unmistakable language" to preclude a subsequent award in another state. The dissenting opinion of Justice Rehnquist also provides that a workers' compensation award should be entitled to *res judicata* effect under the Full Faith and Credit Clause. The concurring opinion of Justice White and the dissenting opinion of Justice Rehnquist represent the opinions of five of the nine Justices. Therefore, contrary to the holding of the Georgia Court of Appeals in the instant case, a majority in *Thomas* did not hold that a compensation award may be treated differently than a judgment in a civil action in a court of law under the Full Faith and Credit Clause. Tennessee law does have "unmistakeable language" precluding a subsequent award in another state. Under Tennessee's "irrevocable election doctrine,"Claimant has irrevocably elected for Tennessee law to apply and cannot subsequently receive benefits under Georgia law. In the various opinions in *Thomas,* this Court indicated that a majority of the Justices would give *res judicata* effect to the award of benefits in Tennessee and its irrevocable election effect. The Georgia Court of Appeals cannot give Georgia an improper preference over Tennessee law. The Tennessee doctrine of irrevocable election could not be more clear, and it is unconstitutional for Georgia to so cursorily disregard the *res judicata* effect of Claimant's initial choice to receive workers' compensation benefits in Tennessee.

The Georgia courts also failed to give the necessary *res judicata* effect to Claimant's acceptance of benefits under

Tennessee law in holding that the statutory requirements for the Georgia Board's exercise of jurisdiction had been met. The first requirement set forth in Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411) for the Georgia Board of Workers' Compensation to exercise jurisdiction is that the contract of employment must have been made in Georgia. In order for Mr. Warren to obtain benefits under Tennessee law, it was required that either the contract for hire be made in Tennessee or that his employment was principally located within Tennessee. Tenn. Code Ann. §50-917. The majority of Claimant's duties for Roadway Express occurred outside of Tennessee on his run to Chicago. Therefore, he could only be eligible for Tennessee benefits if his employment contract was made in Tennessee. By necessity, his acceptance of benefits under Tennessee law constitutes a finding that his contract of employment was entered into in Tennessee. The Supreme Court of Tennessee has held that a workers' compensation claimant cannot repudiate the obligations of a compensation contract in one action while claiming the benefits of that contract in another action. *Tidwell v. Chattanooga Boiler & Tank Company,* 163 Tenn. 420, 43 S.W.2d 221, 223 (1931). Georgia cannot constitutionally ignore Claimant's receipt of benefits in Tennessee and find that his contract of employment was entered into in Georgia. The *res judicata* effect mandated by *Thomas* indicates that even under the terms of its own statute Georgia was not authorized to exercise jurisdiction in this workers' compensation claim.

Accordingly, by applying each of the separate opinions in *Thomas* to the facts and circumstances of the instant case, it is clear that Georgia was required to give full faith and credit to the Tennessee doctrine of irrevocable election and not award Georgia workers' compensation benefits to

Claimant. Georgia further failed to give full faith and credit to Tennessee law by deciding that the requirements of its own statute for the exercise of jurisdiction over this workers' compensation case had been met. It was therefore error for the Georgia Court of Appeals to affirm the exercise of jurisdiction by the Georgia Board of Workers' Compensation in this case, and it is respectfully submitted that this Court should grant the writ of certiorari and reverse the decision of the Georgia Court of Appeals which affirmed the award of Georgia workers' compensation benefits to Claimant.

II.

THE GEORGIA COURTS ERRED IN FAILING TO RECOGNIZE CONTROLLING PRECEDENT FROM THIS COURT WHICH HOLDS THAT THE GEORGIA BOARD OF WORKERS' COMPENSATION CANNOT CONSTITUTIONALLY EXERCISE JURISDICTION IN THIS CASE SINCE GEORGIA DOES NOT HAVE ANY SIGNIFICANT CONTACT OR AGGREGATION OF CONTACTS WITH THE PARTIES AND THE OCCURRENCE OR TRANSACTION INVOLVED.

In affirming the Board's exercise of jurisdiction, the Georgia Court of Appeals failed to give proper deference to the principle set forth by this Court in the decision of *Allstate Insurance Company v. Hague,* 449 U.S. 302, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981) that:

> "[F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interest, such that choice of its law is neither arbitrary or fundamentally unfair." 101 S.Ct. at 640.

The *Hague* decision and prior decisions of this Court in *Home Insurance Company v. Dick,* 281 U.S. 397, 50 S.Ct.

338, 74 L.Ed. 926 (1930) and *John Hancock Mutual Life Insurance Company v. Yates,* 299 U.S. 178, 57 S.Ct. 129, 81 L.Ed. 106 (1936) indicate that application of Georgia law under Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411) is unconstitutional under the facts of this case.

In *Dick,* suit was brought in Texas against a Mexican insurance company and a New York reinsurer under an insurance policy which had been issued in Mexico to cover a Mexican risk. Mr. Dick was a citizen of Texas. The Texas court construed a limitation of actions clause in the policy under Texas law and held that the provision was void. This Court reversed, holding that application of Texas law was unconstitutional as denying due process in light of the absence of any significant contact of the subject occurrence or transaction with Texas. *Yates* involved a suit brought in Georgia on a life insurance policy which had been issued by a Massachusetts corporation in the State of New York for insurance on the life of a New York resident. The suit was brought after the insured had died in New York and his spouse, the beneficiary, had moved to Georgia. Georgia applied its law pertaining to material misrepresentations in application for the policy. This Court reversed, holding that the Georgia court's application of its own law instead of New York law violated the Full Faith and Credit Clause.

Dick and *Yates,* whose continued validity was recognized by this Court in *Hague,* indicate that Georgia does not have a significant contact or aggregation of contacts in this case to warrant application of its law. At all times pertinent to the accident involved in this case, Claimant was a resident of Tennessee. From the date of his reemployment with Roadway Express in 1971 Claimant worked out of the Nashville, Tennessee terminal, and on the date of the acci-

dent (October 20, 1978) and for the previous two years he exclusively drove the Nashville to Chicago route. Claimant's accident occurred in the State of Indiana while he was on his regular run to Chicago from Nashville. He initially chose to receive workers' compensation benefits under the laws of his state of residence, Tennessee, and admitted accepting benefits under the Tennessee Workmen's Compensation Statute. The only contact with Georgia in this case is that Claimant was initially employed by Roadway in Georgia in 1963 and operated for Roadway out of Atlanta, Georgia from 1963 until 1967. In light of Claimant's subsequent reemployment by Roadway in Tennessee in 1971 and the fact that he resided in Tennessee and operated out of that state after that date, the mere fact that he lived in Georgia and worked for Roadway Express from 1963 until 1967 does not constitute a sufficient contact with Georgia to allow application of the Georgia Workers' Compensation Act. The Georgia Court of Appeals' choice of Georgia law was therefore unconstitutional.

Under the holding of *Hague,* the Georgia Court of Appeals should have held that Tennessee law and not Georgia law governed Claimant's workers' compensation case. Tennessee law and its "irrevocable election doctrine" would therefore bar this claim for benefits under Georgia law, requiring that the decision of the Georgia Court of Appeals be reversed.

CONCLUSION

This Court should review this case inasmuch as the Georgia courts have ignored constitutional authority set forth in decisions of this Court. Moreover, this case provides the Court with an opportunity to further clarify the full faith and credit effect of workers' compensation deci-

sions since *Thomas*. For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GREENE, BUCKLEY, DeRIEUX & JONES

By: _____

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February 14, 1983

APPENDIX A
OPINIONS AND ORDERS RENDERED BELOW

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta Nov 16 1982

Case No. 39298. Roadway Express, Inc. v. Warren

The Supreme Court today denied the writ of certiorari in this case.

All the justices concur.

Very truly yours,

MRS. JOLINE B. WILLIAMS, Clerk

COURT OF APPEALS
of the State of Georgia ATLANTA, October 6, 1982

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

64374. Roadway Express, Inc. v. Lawrence G. Warren

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

CLERK OFFICE, ATLANTA, OCT 6 1982

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

CLERK.

COURT OF APPEALS
of the State of Georgia

ATLANTA, January 26, 1982

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

APPLICATION NO. 380 Roadway Express, Inc. v. Lawrence G. Warren

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby granted. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk is directed to include a copy of this order in the record transmitted to the Court of Appeals.
28-1
C-71838

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta January 26, 1982

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk
[signed] Alton Hawk

Applic. No. 1923

SUPREME COURT OF GEORGIA

Atlanta, January 7, 1982

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

ROADWAY EXPRESS, INC. V. LAWRENCE G. WARREN

From the Superior Court of Fulton County.

It is ordered that this Application be hereby transferred to the Court of Appeals.

SUPREME COURT OF THE STATE OF GEORGIA,
Clerk's Office, Atlanta,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto the day and year last above written.

[signed] Joline B. Will

IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA

ROADWAY EXPRESS, INC.,	:	
Employer/Appellant	:	CIVIL ACTION
Vs.	:	FILE NO. C-71838
LAWRENCE G. WARREN,	:	
Employee/Appellee	:	

ORDER

The above-styled matter came before this Court on November 12, 1981 for a hearing on the Employer's appeal from a decision of the Georgia State Board of Workers' Compensation dated January 8, 1981, which affirmed the Administrative Law Judge's award of benefits to the Employee/Appellee.

After having heard argument of counsel, and after careful consideration of all briefs and the entire file of record, the Court finds that there is evidence to support the decision of the Board; therefore, said decision is hereby affirmed.

IT IS SO ORDERED.

This 1 day of December, 1981.

[signed] Sam Phillips McKenzie
SAM PHILLIPS McKENZIE
JUDGE, SUPERIOR COUIRT
ATLANTA, JUDICIAL CIRCUIT

WC 5510

STATE BOARD OF WORKERS' COMPENSATION
1800 Peachtree Street, N.W.
ATLANTA, GEORGIA 30309

NOTICE OF AWARD

CLAIM NO. 255-40-7275 CASE OF Lawrence G. Warren
INJURY DATE October 20, 1978 DATE January 8, 1981

Lawrence G. Warren 630 Spring Oaks Boulevard Altamonta, Florida	Employee
Roadway Express Post Office Box 471 Akron, Ohio 44309	Employer/Self-Insured
Noble E. Pepper, Sr. 4067 Lakeparkway Hermitage, Tennessee 37076	For Claimant
John W. Winborne, III 3100 Peachtree Summit Atlanta, Georgia 30308	For Claimant
Alfred B. Adams, III Daniel A. Angelo Post Office Box 57006 Atlanta, Georgia 30303	For Defendants

This claim came before the Board on October 6, 1980, for review of the award of Judge Almand.

Upon de novo consideration of all evidence, the Baord makes the findings and conclusions of the Administrative Law Judge its findings and conclusions.

AWARD

The award of Judge Almand, dated August 6, 1980, is made the award of the Board.

IT IS SO ORDERED, this the 8th day of January, 1981. Concurring: Chairman E. Earl Mallard and Director James W. Paris.

STATE BOARD OF WORKERS' COMPENSATION

[signed] Don L. Knowles
DON L. KNOWLES, DIRECTOR

Dissenting:
:aa

Opinion of Court of Appeals of Georgia reported at 163 Ga. App. 759, 295 S.E.2d 743 (1982)

64374. ROADWAY EXPRESS, INC. v. WARREN.

POPE, Judge.

This is a discretionary appeal by Roadway Express, Inc. from the order of the superior court below affirming the award of workers' compensation benefits to appellee Lawrence G. Warren.

Appellee was employed by appellant in 1963 as a truck driver operating out of Atlanta. In 1967 appellee was injured in an accident in the course of his employment. He obtained workers' compensation from the State of Tennessee from 1967 to 1971, during which time he did not work for appellant. Appellee returned to work for appellant in 1971 as a truck driver operating out of Nashville, Tennessee. In 1978 appellee was again injured in an accident, this time in Indiana. He applied for and received Tennessee workers' compensation until October, 1979. Appellee thereafter applied for workers' compensation from Georgia, and it is the award of those benefits which appellant here challenges.

1. Because the injury-producing accident occurred outside of Georgia, the controlling jurisdictional statute is Code Ann. § 114-411. This section provides that a claimant is entitled to workers' compensation in Georgia if he was injured in an accident occurring outside the state which was such that it would entitle him or his dependents to compensation had it happened within the state. The section further provides a number of limitations: (1) The contract of employment must have been made in Georgia; (2) The employer's place of business or the employee's residence must be in Georgia; (3) The contract of employment

must not be expressly for service exclusively outside Georgia; and (4) If the employee has received compensation from another state for the injuries sustained in the accident, the sum of the compensation received from the other state together with the compensation subsequently awarded in Georgia may not exceed the maximum compensation allowed under the Georgia Workers' Compensation Act. Code Ann. § 114-411.

Appellant contends that none of the jurisdictional requirements of Code Ann. § 114-411 have been met and therefore the Board has erred in exercising jurisdiction. We, of course, accord considerable deference to the Board and it is under this limited standard of review that we judge appellant's contentions. See Code Ann. § 114-710 and annotations thereto.

2. Appellant first challenges the finding that the contract of employment was made in Georgia. It is undisputed that appellee became employed by appellant in 1963 in Georgia. Appellant, however, claims that appellee's return to work in 1971, after a four year break, was pursuant to a new contract made not in Georgia, but in Tennessee. Alternatively, appellant asserts that a novation of the 1963 contract occurred in 1971 in Tennessee. Appellant bolsters its claim with the argument that appellee's acceptance of Tennessee workers' compensation benefits constitutes an admission by appellee that his employment since 1971 was pursuant to a contract entered into in Tennessee.

Appellee, on the other hand, draws our attention to appellant's own employment form indicating appellee's employment status to be "return to work from extended sick leave" and "reinstatement" rather than "new hire" or "re-hire." Additionally, appellee points out that he never lost any seniority, despite the four years out of work.

Our review of the record convinces us that the contentions of both parties have merit. There is evidence supporting both positions.

In situations such as this, the "any evidence" rule mandates that we respect the findings made by the Board. *Lockhart v. Liberty Mut. Ins. Co.*, 141 Ga. App. 476 (1) (233 SE2d 810) (1977); *Howard Sheppard, Inc. v. McGowan*, 137 Ga. App. 408 (224 SE2d 65) (1976); *Johnson v. Great Southern Trucking Co.*, 101 Ga. App. 472 (114 SE2d 209) (1960). Therefore, regardless of the fact that the Board arguably could have ruled in favor of appellant, we hold that the evidence supports the finding that appellee's employment with appellant was pursuant to the 1963 contract made in Georgia.

3. Appellant's contentions regarding the second and third conditions of Code Ann. § 114-411 also fail under the "any evidence" test. Appellant's contention that it did not have a place of business in Georgia is defeated by its own stipulation that it was "a qualified self-insurer in Georgia, generally subject to the Act in Georgia" and, in addition, testimony authorizing the conclusion. See *Aetna Cas. &c. Co. v. Suits*, 150 Ga. App. 35 (256 SE2d 645) (1979).

Appellant's final jurisdictional attack is the contention that appellee was employed expressly for service exclusively outside of Georgia. Although appellant has ably shown that appellee's driving was nearly entirely outside of the state, this falls short of "exclusively" as provided in § 114-411.

4. The next challenge presented by appellant is that Georgia law was erroneously applied below. Appellant asserts that, under conflict of laws principles, Tennessee law should have been applied. "Conflict of laws . . . constitutes that field of law which determines whether foreign law should or should not be given effect or enforced." 15A CJS 367, Conflict of Laws, § 1(2). "The laws of other

states have no force in Georgia except on principles of comity and so long as their enforcement 'is not contrary to the policy of this State.' [Code Ann.] § 102-110(9)." Gulf Collateral, Inc. v. Morgan, 415 F.Supp. 319, 321 (S.D. Ga. 1976); *Shore Acres Properties, Inc. v. Morgan,* 44 Ga. App. 128 (4) (160 SE 705) (1931).

The last clause of Code Ann. § 114-411 provides that "if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title." This statute contemplates the possibility of a workers' compensation award in Georgia subsequent to an award in another state. Georgia law is thus in accord with the Restatement position: "Relief may be awarded under the workmen's compensation statute of a State of the United States, although the statute of a sister State also is applicable." 1 Restatement, Second, Conflict of Laws § 182. "Generally speaking, an award already had under the compensation act of one state will not bar an award under an applicable act of another state which has an adequate interest in the subject matter, but the amount paid on the first award may be credited on the second award." 99 CJS 148, Workmen's Compensation, § 22b; Industrial Commission v. McCartin, 330 U.S. 622 (67 SC 886, 91 LE 1140) (1947).

Appellant relies on two Tennessee cases holding that when a choice of law is available and the claimant chooses the law of another state, he has made an irrevocable election and cannot later apply for compensation under Tennessee law. True v. Amerail Corp., 584 SW2d 794 (Tenn. 1979); Tidwell v. Chattanooga Boiler &c. Co., 163 Tenn. 420 (43 SW2d 221) (1931). We can readily see Tennessee's interest in preventing a party from seeking to obtain benefits under Tennessee law after the party has been

awarded benefits in another state for the same injury. We do not, however, see any significant interest on the part of Tennessee in preventing Georgia from giving one of its (Tennessee's) residents a supplemental compensation award after the resident has received some compensation from Tennessee. Even if Tennessee's interest in the latter case may be considered to be significant, our legislature has spoken to the significance of Georgia's interest in this situation in the language of Code Ann. § 114-411. That section, as explained supra, provides for supplemental awards so long as the sum awards from Georgia and the other state do not exceed the maximum allowed by the Georgia act. We conclude, therefore, that the Georgia legislature intended the Georgia Workers' Compensation Act to apply when jurisdiction is invoked under Code Ann. § 114-411, and general conflict of laws principles do not require the State Board of Workers' Compensation or the courts of this state to apply any other law besides the Georgia Workers' Compensation Act in proceedings under that section. See *Security Ins. Group v. Plank*, 133 Ga. App. 815(2) (212 SE2d 471) (1975).

5. Appellant also contends that appellee was barred from recovery in Georgia under the Full Faith and Credit Clause of the United States Constitution. Appellant argues that our State Board of Workers' Compensation was required to have given full faith and credit to the Tennessee decision which found appellee no longer entitled to workers' compensation benefits.

In this case, appellee received Tennessee workers' compensation benefits for approximately one year. These benefits ceased when appellee was determined to be no longer disabled under Tennessee law. Is this Tennessee decision entitled to full faith and credit in Georgia so as to bar recovery under this state's Workers' Compensation Act? We are not persuaded that the relevant case law, applying the Full Faith and Credit Clause, requires such a

result. In our view, the more reasonable interpretation is that the Georgia Board is not precluded from applying the Georgia Workers' Compensation Act when jurisdiction has been properly invoked thereunder, notwithstanding an award properly made in a sister state. The United States Supreme Court is in general agreement with this position.

In Pacific Employers Ins. Co. v. Industrial Accident Commission, 306 U.S. 493 (59 SC 629, 83 LE 940) (1939), the issue presented was whether the Full Faith and Credit Clause precluded California from applying its own workers' compensation act, instead of the Massachusetts act, where a Massachusetts employee of a Massachusetts employer was injured in California in the course of his employment. 306 U.S. at 497. The Court opined that to the extent California would be required to apply the conflicting Massachusetts law, "it must be denied the right to apply in its own courts its own statute, constitutionally enacted in pursuance of its policy to provide compensation for employees injured in their employment within the state. It must withhold the remedy given by its own statute. . . . We cannot say that the full faith and credit clause goes so far." 306 U.S. at 501. While the case itself is distinguishable from the case at bar, the underlying reasoning is apposite. The case follows, and reaffirms, the case of Alaska Packers Assn. v. Industrial Accident Commission, 294 U.S. 532 (55 SC 518, 79 LE 1044) (1935). In that case, the issue was whether California could apply its workers' compensation act to the claim for compensation by a non-resident alien who contracted in California for employment in Alaska and was injured in the latter state. The Court held that California could apply its own law. 294 US. at 550; see generally id. at 540-50. The Court determined that the California act did not purport to have any extraterritorial effect, but was designed to provide a remedy for injuries received in the course of employment entered into within the state, wherever they may occur. Id. at 540. Compare Bradford Elec. Light Co. v. Clapper, 286

U.S. 145 (52 SC 571, 76 LE 1026) (1932), which is fully reviewed in Alaska Packers Assn., supra. Compare also Industrial Commission v. McCartin, supra, with Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (64 SC 208, 88 LE 149) (1943). See also Carroll v. Lanza, 349 U.S. 408 (75 SC 804, 99 LE 1183) (1954).

Most of these cases were re-examined by the Supreme Court in Thomas v. Washington Gas Light Co., 448 U.S. 261 (100 SC 2647, 65 LE2d 757) (1980). In that case, a resident of the District of Columbia, who had been hired in the District of Columbia by a firm principally located there, was injured on the job in Virginia. He applied for and received workers' compensation benefits from Virginia. He later applied for and was awarded supplemental benefits from the District of Columbia, but the decision was reversed by the United States Court of Appeals for the Fourth Circuit. The Supreme Court reversed the Fourth Circuit, holding (in a divided opinion) that the Full Faith and Credit Clause did not preclude the supplemental award of benefits.

While these cases are factually distinguishable from the case at bar, we find them analogous. We further find that these cases are in general agreement with the Restatement position. See also Allstate Ins. Co. v. Hague, 449 U.S. 302 (101 SC 633, 66 LE2d 521) (1981). Accordingly, we conclude that the Full Faith and Credit Clause did not bar appellee's claim for benefits under the Georgia Workers' Compensation Act.

6. Appellant also contends: "By not treating the prior award of compensation entered into in Tennessee as though it were a final judgment entered by a court of competent jurisdiction, the State Board of Workers' Compensation unconstitutionally treated a compensation award differently than a judgment entered in a civil action in a court of law. As such, litigants in a [workers'] compensation matter and litigants in a civil court matter have been

treated differently." This contention has been resolved adversely to appellant by the United States Supreme Court in Thomas v. Washington Gas Light Co., supra. See generally 4 Larson, Workmen's Compensation Law, § 85.60.

7. Appellant's next contention is that the evidence does not support the Board's finding of disability. Appellant extracts from the record a volume of evidence assertedly negating the Board's finding. Appellee, on the other hand, points to evidence assertedly authorizing the finding. Under the "any evidence" test, that is enough. We will not reweigh the conflicting evidence, but only ensure there was some evidence to support the findings below. See Division 2, supra.

8. Appellant's final contention is that it is entitled to a credit for all benefits received by appellee under the Tennessee award. We agree. Code Ann. § 114-411 expressly mandates that this be done. We also find that the Board's award, taken together with § 114-411, provides for the credit.

Appellant further argues that the award is deficient in that it makes no provision for benefits authorized but not yet received by appellee under Tennessee law. This argument has no merit. Code Ann. § 114-411 prevents appellant from being subject to double liability and the Board is without authority to execute an award in contravention of this statute. We see no need for such a proscription to be written into the Boards award.

Judgment affirmed. Deen, P.J., and Sognier, J., concur.

DECIDED SEPTEMBER 16, 1982 –
REHEARING DENIED OCTOBER 6, 1982 – CERT. APPLIED FOR.

Workers' compensation. Fulton Superior Court. Before Judge McKenzie.

David M. Holliday, Alfred B. Adams III, Daniel A. Angelo, for appellant.

John W. Winborne III, Noble E. Pepper, for appellee.

STATE BOARD OF WORKERS' COMPENSATION
1800 Peachtree Street, N.W.
ATLANTA, GEORGIA 30309

NOTICE OF AWARD

CLAIM NO. 255-40-7275 CASE OF Lawrence G. Warren
INJURY DATE 10-20-78 DATE August 6, 1980

Lawrence G. Warren — Employee/Claimant
630 Spring Oaks Boulevard
Altamonta, Florida

Roadway Express — Employer/Self-Insured
1077 George Boulevard
P.O. Box 471
Akron, Ohio 44309

Noble E. Pepper — For Employee/Claimant
5151 Lebanon Road
Old Hickory, Tennessee 37138

John W. Winborne, III — For Employee/Claimant
3100 Peachtree Summit
Atlanta, Georgia, 30308

Alfred B. Adams, III — For Defendants
1515 Peachtree Center South
225 Peachtree Street, N.E.
P.O. Box 57006
Atlanta, Georgia 30303

STATEMENT AND FINDINGS OF FACT

At the request of the claimant, a hearing came on before the undersigned on March 11, 1980 to determine all Title 114 issues with respect to an injury sustained by the claimant on October 20, 1978. The defendants filed a notice to controvert on November 13, 1979. The parties agreed to the following stipulations: the employer is a qualified self-insurer in Georgia, generally subject to the Workers' Com-

pensation Act; on October 20, 1978 the claimant was in the general employ of the employer; he was then earning an average weekly wage of $586.73; on October 20, 1978 the claimant did sustain an accident arising out of his employment with the employer; the employer received timely notice thereof; at the time of the accident the claimant was a resident of Tennessee, working out of Nashville; the accident happened in Indiana; the claimant has been paid compensation under Tennesee law from October 21, 1978 through October 12, 1979 at the rate of $100.00 per week.

The evidence on the hearing showed the following undisputed facts. The claimant filled out an employment application with Roadway Express, employer, on March 7, 1963. He began working for them as an over-the-road truck driver on March 25, 1963 in Atlanta, Georgia. The claimant was on extended sick leave from 1967 until 1971 because of an on the job trucking accident. He received Georgia Workers' Compensation benefits during that time.

While the claimant was disabled, his employer's operation in Atlanta changed from a two man to a single operation, resulting in a decrease in the number of drivers working out of Atlanta. The claimant was given a choice of different terminals to transfer to because Roadway Express cut the board in Atlanta from 343 to 110 drivers. The drivers worked strictly on seniority and at that time the claimant was approximately number 320 on the list. The claimant did have the option of remaining in Atlanta; however, if a driver's seniority did not carry him to one of the terminals he chose, he would be forced to take a layoff letter which limited to two years the time during which the employer would have to call an employee back to work.

Fearing a layoff letter if he chose to remain in Atlanta, the claimant listed Nashville, Tennessee as his first choice and his seniority carried him there.

In 1971 the claimant returned to work for Roadway in Nashville and never lost any of his seniority. He once more worked as an over-the-road truck driver and filled out no new employment application. Upon his return the claimant's first run was mostly back to Atlanta where his family was still living. For the next four years the claimant had a run to Columbia, Tennessee and thereafter he bid for a Chicago run which he kept until his accident on October 20, 1978. On that date he was rear-ended and thrown from his truck. Subsequently the parties involved entered into an agreement whereby the claimant elected to come under the Workers' Compensation Laws of Tennessee. The claimant received benefits pursuant to this agreement from October 21, 1978 through October 12, 1979. Termination of these benefits was based on a medical report of Dr. Raymond Gilmer, Jr., dated October 5, 1979, wherein he stated that the claimant had a healed fracture of his dorsal spine which had been injured in a prior accident. Dr. Gilmer advised the claimant that there was nothing more than he could do for him and that the claimant should discontinue all medications, wearing a back brace, and using a nerve stimulator.

Following his accident in October of 1978, the claimant was hospitalized in Dyer, Indiana where he was told by Dr. Perez that he had a concussion and swelling of the brain. Troubled by severe headaches, the claimant remained in the hospital for four weeks. Thereafter he was transferred to Nashville under the care of his family physician, Dr. Thomas Miller. The claimant received active medical treatment and/or examinations from Doctors Thomas

Huber, William Schmeling, Arthur Cushman, Gerry Hodges, Don Gaines, Raymond Gilmer, Armond Zilioli, William Eckbert, and Henry Van Twyver, Ph.D. It was the consensus of these physicians that a majority of the claimant's problems were not anatomically related to his low back but instead were psychological in nature. Several doctors noted that prior to the claimant's accident on October 20, 1978, he had been involved in several other motor vehicle accidents which had caused him psychological distress.

The first issue which must be addressed is whether or not the Georgia State Board of Workers' Compensation has jurisdiction over this claim. Code Section 114-411 controls. Therein it states that the Georgia Board has jurisdiction over a claim arising out of an accident occurring out of state if the contract of employment was made in this state and if the employer's place of business is in Georgia, provided that the contract is not expressly for service exclusively outside of the state.

Under the facts of this case, as set forth above, the contract of employment was entered into between the parties when the claimant initially went to work for the employer in 1963 in the State of Georgia. This contract was not for work exclusively outside the state. Roadway Express stipulated that it was a qualified self-insurer in Georgia, generally subject to its Workers' Compensation Act. It therefore may be inferred that the employer had a place of business in this state.

The second issue which must be addressed is whether or not the claimant's election and actual receipt of compensation benefits under Tennessee law from October 21, 1978 through October 12, 1979 bars him from seeking a second recovery in Georgia. The employer contends that

he is so barred by conflict of laws, principles and the Full Faith and Credit Clause of the United States Constitution. Under Tennessee law a claimant who may be eligible for compensation benefits under the laws of two or more states makes an irrevocable election to proceed under one state's laws when he voluntarily begins a proceeding in one state and receives benefits under that state's laws. However, on June 27, 1980 the United States Supreme Court held that a state has no legitimate interest within the context of our federal system in preventing another state from granting a supplemental compensation award when that second state would have had the power to apply its workers' compensation law in the first instance. The Court added that the Full Faith and Credit Clause should not be construed to preclude successive workers' compensation awards. *Thomas v. Washington Gas Light Co.*, ____ U.S. ____, 48 L.W. 4930, 4937. Because the Georgia Board has the power to apply its Workers' Compensation Law to this claim, Tennessee law cannot preclude the granting of a supplemental compensation award in the State of Georgia.

The final issue which must be addressed is whether or not the claimant remains disabled as a result of the injuries he sustained on the job in October of 1978. His compensation benefits were terminated on October 12, 1979, based upon a medical report submitted by Dr. Raymond Gilmer, Jr., dated October 5, 1979. It is stated therein that the claimant can return to work and needs to take only Bufferin or aspirin for his pain.

In a report dated October 15, 1979, Dr. Armand Zilioli, associated with the Central Florida Orthopaedic Group, pointed out that in 1967 the claimant had a similar trucking accident injuring his back and his head. It took about four years to clear up the claimant's headaches, requiring psychiatric care at that time, including hospitalization. It

was Dr. Zilioli's impression that with such a pre-existing psychiatric history, the claimant was probably suffering from chronic pain syndrome. On May 1, 1980, the claimant saw Dr. Zilioli with complaints of worsening headaches with pain radiating down the middle of his back into the lower back area, and out both legs. Dr. Zilioli thought that the majority of these complaints were not anatomically related to the claimant's lower back, but instead were psychological in nature.

Dr. Thomas Miller, the claimant's family physician, stated in his deposition of December 6, 1979, that he first saw the claimant in June of 1977, prior to the accident here in question and for a totally unrelated condition. Because of the injuries he sustained in October of 1978, the claimant returned to Dr. Miller on October 26, 1978. By November the claimant continued to complain about severe headaches at which time Dr. Miller stated that it was getting relatively far away from the date of the accident for the claimant to still have post traumatic pain. Therefore, Dr. Miller began to wonder whether or not the pain was related to the injury itself or was beginning to become a muscular tension headache. It came to the doctor's attention that the claimant had been involved in two previous accidents resulting in the death of two people. This had created created a chronic anxiety state for the claimant which continued to worsen. It was Dr. Miller's belief that the claimant's accident on October 20, 1978 shook him up and caused old headaches to return. In his opinion, the pain the claimant was suffering was a result of this accident because prior to October of 1978 the claimant had never complained to Dr. Miller about headaches; after the accident he never had a day without one.

Since portions of claimant's exhibit number four are based on information conveyed to Henry Van Twyver, Ph.D.,

by other persons and since it is not possible for the undersigned to determine which portions are not based on hearsay, defendant's objection to this exhibit is hereby sustained and the same has not been considered in reaching this decision.

Based upon all of the evidence adduced, I find that:

1. On October 20, 1978, the claimant was in the general employ of Roadway Express at an average weekly wage of $586.73.

2. On the aforesaid date the claimant sustained an injury by accident arising out of and in the course of his employment. The claimant became immediately disabled because of the aforesaid accident and has remained continuously disabled since. The claimant is in need of further medical care, possibly including treatment by a psychiatrist.

3. The Georgia State Board of Workers' Compensation does have jurisdiction over this claim.

4. The claimant's election and receipt of compensation benefits under Tennessee law does not preclude the granting of a supplemental award by the Georgia Board.

5. The claimant has received income benefits under the law of Tennessee for disability suffered by him on account of the accident here in question from October 21, 1978 through October 12, 1979 at the rate of $100.00 per week.

WHEREFORE, based upon the above and foregoing findings of fact and the conclusions of law applicable

thereto, Roadway Express, employer/self-insured, is hereby ordered to pay to Lawrence G. Warren, employee, compensation at the rate of $110.00 per week beginning October 20, 1978, and to continue until such time as the claimant shall undergo a change of condition for the better or until further order of this Board. The defendants are authorized to take credit against the foregoing award for all income benefits paid to the claimant under Tennessee law on account of this accident.

The defendants are further directed to continue to furnish to or on behalf of the claimant all such medical, surgical, hospital, psychiatric or other care as may be reasonably required in the future to effect a cure or give relief to the claimant's injury resultant condition.

All accrued compensation is due and payable immediately upon receipt of this award.

AND IT IS SO ORDERED, this the 6th day of August, 1980.

STATE BOARD OF WORKERS' COMPENSATION

[signed] H. Grady Almand, Jr.
H. GRADY ALMAND, JR.
ADMINISTRATIVE LAW JUDGE

HGA:sf

APPENDIX B

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. IV, §1

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. amend. XIV, §1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Official Code of Ga. Ann. §34-9-242 (Ga. Code Ann. §114-411)

Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this state or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provid-

ed, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title.

Official Code of Ga. Ann. §34-9-261 (Ga. Code Ann. §114-404)

While the disability to work resulting from an injury is total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's average weekly wage but not more than $135.00 per week nor less than $25.00 per week, except that when the weekly wage is below $25.00 the employee shall pay a weekly benefit equal to the average weekly wage.

Tenn. Code Ann. §50-914

When the injury or death for which compensation is payable under the Workmen's Compensation Law was caused under circumstances creating a legal liability against some person other than the employer to pay damages, the injured workman, or his dependents, shall have the right to take compensation under such law, and such injured workman, or those to whom his right of action survives at law, may pursue his or their remedy by proper action in a court of competent jurisdiction against such other person. In the event of a recovery from such other person by the workman, or those to whom his right of action survives, by judgment, settlement, or otherwise, the attorney representing such injured workman, or those to whom his right of action survives, and effecting said recovery, shall be entitled to a reasonable fee for his services, and said attorney shall have a first lien therefor against said recovery; provided, however, that if the

employer has engaged other counsel to represent the employer in effecting recovery against such other person, then a court of competent jurisdiction shall, upon application, apportion said reasonable fee between the attorney for the workman and the attorney for the employer, in proportion to the services renderd.

In event of such recovery against such third person by the workman, or by those to whom his right of action survives, by judgment, settlement, or otherwise, and the employer's maximum liability for workmen's compensation under chapters 9 through 12 of this title has been fully or partially paid and discharged, the employer shall have a subrogation lien therefor against such recovery and the employer may intervene in any action to protect and enforce such lien. Provided, further, that in event said net recovery by the workman, or by those to whom his right of action survives, exceeds the amount paid by the employer, and the employer has not, at said time, paid and discharged his full maximum liability for workmen's compensation under chapters 9 through 12 of this title, the employer shall be entitled to a credit on his future liability, as it accrues, to the extent the net recovery collected exceeds the amount paid by the employer. Provided further, however, that in event the workman, or those to whom his right of action survives, effects a recovery, and collection thereof, from such other person, by judgment, settlement, or otherwise, without intervention by the employer, the employer shall, nevertheless, be entitled to a credit on his future liability for workmen's compensation, as it accrues under chapters 9 through 12 of this title, to the extent of said net recovery.

Such action against such other person by the injured workman, or those to whom his right of action survives, must be instituted in all cases within one (1) year from the

date of injury. Failure on the part of the injured workman, or those to whom his right of action survives, to bring such action within said one (1) year period shall operate as an assignment to the employer of any cause of action in tort which the workman, or those to whom his right of action survives, may have against any other person for such injury or death, and such employer may enforce same in his own name or in the name of the workman, or those to whom his right of action survives, for such employer's benefit, as such employer's interest may appear, and the employer shall have six (6) months after such assignment within which to commence suit.

Tenn. Code Ann. §50-917

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this law had such injury occurred within this state, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by this law, provided that at the time of such injury: (a) the employment was principally localized within this state, or (b) the contract of hire was made in this state.

Tenn. Code Ann. §50-1005

(a) No compensation shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, except the benefits provided for in § 50-1004, but if disability extends beyond that period, compensation shall commence with the eighth day after the injury. In the event, however, the disability from the injury exists for a period as much as fourteen (14) days, then compensation shall be allowed beginning with the first day after the injury.

(b) The total amount of compensation payable under this chapter shall not exceed fifty-four thousand four hundred dollars ($54,400) in any case, exclusive of medical, hospital and funeral benefits. Compensation shall be paid promptly, the first payment shall be due and payable within fifteen (15) days after the employer has knowledge of any disability or death, and thereafter compensation shall be paid to the employee or his dependents semimonthly. Any employer or his insurance carrier who fails to pay compensation as herein provided shall suffer a penalty of six percent (6%) on any unpaid installments.

(c) Upon making the first payment of benefits, and upon stopping or changing such benefits for any cause other than final settlement, or upon denying a claim after proper investigation, the employer's insurance carrier or the employer, if self-insured, shall immediately notify the director, on a form prescribed by him, that the payment of income benefits has begun or has been stopped or changed. Failure to file such notice shall be a dmisdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50.00).

(d) If payments have been made without an award, and the employer subsequently elects to controvert his liability, notice of controversy shall be filed with the director within fifteen (15) days of the due date of the first omitted payment. Failure to file such notice shall be a misdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50.00). In such cases the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall

the acceptance of compensation by the employee be considered a binding determination of his rights.

Tenn. Code Ann. § 50-1007

The following is the schedule of compensation to be allowed employees under the provisions of the Workers' Compensation Law:

(a) TEMPORARY TOTAL DISABILITY. For injury producing temporary total disability, sixty-six and two-thirds percent (66⅔%) of the average weekly wages as defined in this chapter, subject to a maximum compensation of one hundred thirty-six dollars ($136) per week and a minimum of fifteen dollars ($15.00) per week; provided that if the employee's average weekly wages are fifteen dollars ($15.00) or more per week he shall receive not less than fifteen dollars ($15.00) per week; and provided further, that if his average weekly wages are less than fifteen dollars ($15.00) per week he shall receive the full amount of his average weekly wages, but in no event shall the compensation paid be less than fifteen dollars ($15.00) per week. Where a fractional week of temporary total disability is involved the compensation for each day shall be one seventh (1/7) of the amount due for a full week.

(b) ***

(c) PERMANENT PARTIAL DISABILITY. In case of disability partial in character but adjudged to be permanent, there shall be paid to the injured employee, in addition to the benefits provided by § 50-1004, the following: (1) sixty-six and two-thirds percent (66⅔%) of his average weekly wages for the period of time during which he suffers temporary total disability on account of the injury, the same being subject to the same limitation as to minimum and

maximum as provided in subsection (a) of this section; and (2) in addition to the foregoing he shall receive sixty-six and two-thirds percent (66⅔%) of his average weekly wages in accordance with the schedule hereinafter set out, provided, that the compensation paid the injured employee for the period of temporary total disability and temporary partial disability shall not be deducted from the compensation to be paid under said schedule.

For the loss of a thumb, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during sixty (60) weeks.

For the loss of a first finger, commonly called index finger, sixty-six and two-thirds percent (66⅔%) of average weekly wages during thirty-five (35) weeks.

For the loss of a second finger, sixty-six and two-thirds percent (66⅔%) of average weekly wages during thirty (30) weeks.

For the loss of a third finger, sixty-six and two-thirds percent (66⅔%) of average weekly wages during twenty (20) weeks.

For the loss of a fourth finger, commonly called little finger, sixty-six and two-third percent (66⅔%) of average weekly wages during fifteen (15) weeks.

For the loss of first phalange of the thumb, or of any finger, which shall be considered equal to the loss of one half (½) of such thumb, or finger, compensation shall be paid at the prescribed rate during one half (½) of the time specified above for such thumb or finger.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for

more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the great toe, sixty-six and two-thirds percent (66⅔%) of average weekly wages during thirty (30) weeks.

For the loss of one (1) of the toes other than the great toe, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during ten (10) weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one half (½) of such toe, and compensation shall be paid at the prescribed rate during one half (½) the time specified above for such toe.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, sixty-six and two-thirds percent (66⅔%) of average weekly wages during one hundred and fifty (150) weeks.

For the loss of an arm, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during two hundred (200) weeks.

For the loss of a foot, sixty-six and two-thirds percent (66⅔%) of average weekly wages for one hundred and twenty-five (125) weeks.

For the loss of a leg, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during two hundred (200) weeks.

Compensation for an arm or leg, if amputated above the wrist joint or above the ankle joint shall be for the loss of the arm or leg.

For the loss of an eye, sixty-six and two-thirds percent (66⅔%) of average weekly wages during one hundred (100) weeks.

For the complete permanent loss of hearing in both ears, sixty-six and two-thirds percent (66⅔%) of average weekly wages during one hundred and fifty (150) weeks.

For the loss of an eye and a leg, sixty-six and two-thirds percent (66⅔%) of average weekly wages during three hundred and fifty (350) weeks.

For the loss of an eye and an arm, sixty-six and two-thirds percent (66⅔%) of average weekly wages during three hundred and fifty (350) weeks.

For the loss of an eye and a hand, sixty-six and two-thirds percent (66⅔%) of average weekly wages during three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, sixty-six and two-thirds percent (66⅔%) of average weekly wages during three hundred (300) weeks.

For the loss of two (2) arms, other than at the shoulder, sixty-six and two-thirds percent (66⅔%) of average weekly wages during four hundred (400) weeks.

For the loss of two (2) hands, sixty-six and two-thirds percent (66⅔%) average weekly wages during four hundred (400) weeks.

For the loss of two (2) legs, sixty-six and two-thirds percent (66⅔%) average weekly wages during four hundred (400) weeks.

For the loss of two (2) feet, sixty-six and two-thirds percent (66⅔%) average weekly wages during four hundred (400) weeks.

For the loss of one (1) arm and the other hand, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the loss of one (1) hand and one (1) foot, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the loss of one (1) leg and one (1) hand, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the loss of one (1) arm and one (1) foot, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the loss of one (1) arm and one (1) leg, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

For the total and permanent loss of the sight of both eyes, or the loss of both arms at the shoulder, or complete and permanent paralysis, or total and permanent loss of mental faculties, sixty-six and two-thirds percent (66⅔%) of the average weekly wages during four hundred (400) weeks.

The total amount of compensation payable in subsection (c) shall not exceed fifty-four thousand four hundred dollars ($54,400) in any case.

Pay for concurrent injuries. When an employee sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which produced the longest period of disability, but this section shall not affect liability for the concurrent loss of more than one member, for which members compensation are provided in the specific schedule and in subsection (e) below.

In all cases the permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation in and by said schedule provided shall be in lieu of all other compensation.

Permanent partial disability in certain cases. In cases of permanent partial disability due to injury to a member resulting in less than total loss of use of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member, which the extent of injury to the members bears to its total loss. If an injured employee refuses employment suitable to his capacity, offered to or procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal, unless at any time in the opinion of the county executive of the county of his residence such refusal is justifiable. All compensation provided in clause (c) of this section for loss to members, or loss of use of members, is subject to the same limitations as to maximum and minimum as are stated in clause (a).

For serious disfigurement to the head, face or hands, not resulting from the loss of a member or other injury specifically compensated, so altering the personal appearance of the injured employee as to materially affect his employability in the employement in which he was injured or other employment for which he is then qualified sixty-six and two-thirds percent (66⅔%) of the average weekly wages for such period as the court may determine, not exceeding two hundred (200) weeks. The benefit herein provided shall not be awarded in any case where the injured employee is compensated under any other provision of the Workers' Compensation Law.

All other cases of permanent partial disability not above enumerated shall be apportioned to the body as a whole, which shall have a value of four hundred (400) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. Compensation for such permanent partial disability shall be subject to the same limitations as to maximum and minimum as provided in subsection (a). If an employee has previously sustained an injury compensable under this section for which a court of competent jurisdiction has awarded benefits based on percentage of disability to the body as a whole and suffers a subsequent injury not enumerated above, the injured employee shall be paid compensation for the period of temporary total disability and only for the degree of permanent disability that results from said subsequent injury. The benefits provided by this paragraph shall not be awarded in any case where benefits for a specific loss are otherwise provided in this title.

(d) PERMANENT TOTAL DISABILITY. For permanent total disability as defined in subsection (e), sixty-six and two-thirds percent (66⅔%) of the wages received at the time of the injury, subject to a maximum compensation of one hundred thirty-six dollars ($136) per week and a minimum of fifteen ($15) per week; provided, that if the employee's average weekly wages are fifteen dollars ($15.00) or more per week he shall receive not less than fifteen dollars ($15.00) per week; provided, further, that if his average weekly wages are less than fifteen dollars ($15.00) per week he shall receive the full amount of his average weekly wages but in no event shall the compensation paid be less than fifteen dollars ($15.00) per week. This compensation shall be paid during the period of such permanent disability, not exceeding five hundred and fifty (550) weeks, but

in all such cases drawing more compensation than fifteen dollars ($15.00) per week, the payments after the first four hundred (400) weeks shall be reduced to fifteen dollars ($15.00) per week for the remainder of the five hundred fifty (550) weeks while the permanent total disability continues, payments to be made at the intervals when the wage was payable, as nearly as may be. The total amount of compensation payable under this subsection shall not exceed fifty-four thousand four hundred dollars ($54,400) in any case; provided, however, that in case an employee who is permanently and totally disabled becomes an inmate of a public institution, and provided further, that if no person or persons are wholly dependent upon him, then the amounts falling due during the lifetime of such employee shall be paid to him or to his guardian, if non compos mentis, to be spent for the ward's benefit; such payments to cease upon the death of the employee.

(e) PERMANENT TOTAL DISAIBLITY DEFINED. When an injury not otherwise specifically provided for in this chapter as amended, totally incapacitates the employee from working at an occupation which brings him an income, such employee shall be considered "totally disabled," and for such disability compensation shall be paid as provided in subsection (d) hereof, provided that the total amount of compensation payable hereunder shall not exceed fifty-four thousand four hundred dollars ($54,400) exclusive of medical and hospital benefits.

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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ROADWAY EXPRESS, INC.,

Petitioner,

v.

LAWRENCE G. WARREN,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR CERTIORARI

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DESIGNATION OF CORPORATE RELATIONSHIPS

Roadway Express, Inc., filing this supplemental brief in support of petition for certiorari, states that:

This is its second Designation of Corporate Relationships. The Designation that was filed originally on February 14, 1983 is currently accurate.

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ARGUMENT AND CITATION OF AUTHORITY

On February 14, 1983 Roadway Express, Inc. filed its petition for certiorari herein. Among the contentions of Roadway Express in support of its petition for certiorari are that respondent Lawrence G. Warren made an irrevocable election to proceed under the workers' compensation law of Tennessee, the state in which he first received workers' compensation benefits, and that the Full Faith and Credit Clause of the United States Constitution (U.S. Const. art. IV, § 1) requires that the Georgia Board of Workers' Compensation give full faith and credit to this prior award of compensation in Tennessee. Additionally, Roadway Express, Inc. contended in its petition for cer-

tiorari that the balancing of interests test advocated by the plurality opinion of *Thomas v. Washington Gas Light Company*, 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed.2d 757 (1980), when applied to the facts of the instant case, indicates that Tennessee has a greater interest in application of its law than Georgia has in ignoring Tennessee's irrevocable election doctrine.

Since the filing of its petition for certiorari, Roadway Express, Inc. has received an unpublished order in the case of *Roadway Express, Inc. v. Lawrence G. Warren*, No. H 79-490 (N.D. Ind. Feb. 9, 1983). This is an order entered by the Federal District Judge for the Northern District of Indiana granting Roadway Express, Inc.'s motion for summary judgment in an action for subrogation to recover workers' compensation benefits paid under Tennessee law from the tortfeasor responsible for the accident which is the subjnect of Mr. Warren's workers' compensation claims in Tennessee and Georgia. In its order the District Court holds that Tennessee has a more significant relationship to the case than Indiana or Georgia. The District Court also holds in its order that Mr. Warren made a legally binding election to accept benefits under Tennessee law. Copy of this order is set forth in the Appendix to this supplemental brief, *infra*.

Roadway Express, Inc. respectfully submits that this order provides further support for its contention that the Full Faith and Credit Clause of the United States Constitution barred the Georgia Board of Workers' Compensation from granting a second award of workers' compensation benefits to respondent Lawrence G. Warren. Accordingly, Roadway Express, Inc. requests the Court to review this order in connection with its consideration of this petition for a writ of certiorari.

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APPENDIX

UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF INDIANA
HAMMOND DIVISION

ROADWAY EXPRESS, INC.)
Intervenor-Plaintiff) Civil No. H 79-490
)
v.)
)
LAWRENCE G. WARREN, *et al,*)
Cross-Defendants)

Filed
Feb 09 1983
Richard E. Timmons, Clerk
U.S. District Court
Northern District of Indiana

ORDER

This matter is before the Court on the following motions:

1) Plaintiff's Motion to Dismiss, filed on April 1, 1982;

2) Intervening plaintiff's Motion for Summary Judgment, filed on December 24, 1981.

Plaintiff's Motion to Dismiss is DENIED. intervening plaintiff's Motion for Summary Judgment is GRANTED.

The matters under consideration here were left under advisement by this Court in its order of September 23, 1982 pending the filing of briefs by the parties. Intervening plaintiff Roadway Express, Inc. (Roadway) filed its brief in a timely fashion. Plaintiffs Lawrence G. and Katheryn D. Warren filed their brief after the deadline set by this Court but the Court has considered it anyway. The Court has also considered Roadway's response, filed on November 12, 1982. In entering the following Order, the

Court incorporates by reference its Order of September 23, 1982.

MOTION TO DISMISS

Warren moves to dismiss Roadway's subrogation claim by arguing that the same issues presented here are also pending before state courts in Georgia and Tennessee. Warren's argument based on the principles of collateral estoppel was rejected in this Court's September 23rd Order. The Court reserved ruling on Warren's contention that this case should be stayed pending the outcome of the state cases. This argument is also without merit.

The Seventh Circuit has analyzed the circumstances under which a federal court should stay an action pending before it where the parties are involved in an identical case pending before a state court in three recent cases: *Evans Transportation Co. v. Scullin Steel Co.*, 693 F.2d 715 (7th Cir. 1982); *Voktas, Inc. v. Central Soya Company, Inc.*, 689 F.2d 103 (7th Cir. 1982); *Microsoftware Computer Systems v. Ontel Corp.*, 686 F.2d 531 (7th Cir. 1982). All of these decisions are based on principles set down in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). In the latter case, the Supreme Court held in part that where a federal court and a state court exercise concurrent jurisdiction over a case, the federal court may decline to exercise its jurisdictional powers for reasons of wise judicial administration where "exceptional circumstances" exist. *Id.* at 818. In the *Ontel* case, exceptional circumstances were found to exist where the state action was filed first; there was no peculiar federal interest in maintaining the case in federal court; the state could fully resolve all issues; the state court was more adept at interpreting state law. The *Voktas* court affirmed the trial

court's denial of a stay where the state action was stayed first and the state court expressed reluctance to deal with complicated issues involved in the case. Finally, in *Scullin*, the appellate court remanded the case to the district court for decision on the stay application noting several potential "exceptional circumstances": the state court action might be filed and under way a substantial period of time before the federal action is instituted; the applicable substantive law is that of a foreign jurisdiction; or the state forum may be more convenient. 693 F.2d at 720. Because the Seventh Circuit in *Ontel, Voktas* and *Scullin* went into some detail to describe the "exceptional circumstances" which might justify a federal stay under *Colorado River, those cases must be distinguished from the present case.*

The Ontel, Voktas and *Scullin* decisions must be distinguished here because there is no problem with concurrent jurisdiction between a state and federal court. In all three of the Seventh Circuit cases discussed above, identical actions were pending simultaneously before a state court and a federal court. That is not the situation here. The present case was initiated by Warren to recover damages from the defendant tortfeasor. The original action has been settled but it remains to be decided whether Roadway has a valid subrogation lien on the settlement proceeds. So far as this Court can determine, the Georgia action is merely a dispute as to the amount of supplemental workmen's compensation Warren may recover there and the issue of Roadway's subrogation lien under Tennessee law has not been questioned. Consequently, this action will not be stayed pending the outcome of the Georgia proceeding. The Tennessee case involves the question of what liability Roadway has to pay further workmen's compensation benefits to Warren under Tennessee law.

Although the issue of Roadway's subrogation lien could arise in the Tennessee proceeding, it would only arise as a collateral issue and it is clear that only this Court has the issue squarely before it. This Court will therefore not stay this action pending the outcome of the Tennessee proceeding.

Aside from Warren's argument that this action should be stayed pending the outcome of either the Georgia or the Tennessee proceeding, Warren also argues that this case should be dismissed because of the "prior suit pending" in Tennessee. *See Tallent v. Shevell,* 27 Tenn. App. 683, 184 S.W.2d 561 (1944). In *Shevell*, the Tennessee Court of Appeals held that where identical cases were filed in two separate county courts, the court which acquired jurisdiction first retained jurisdiction. Suffice it to say that as between federal and state courts, the mere fact that an action is first filed in a state court does not deprive a federal court of jurisdiction over an identical case. *See, e.g., Evans Transportation Co. v. Scullin*, 693 F.2d at 718. For these reasons, Warren's motion to dismiss Roadway's subrogation claim is denied.

MOTION FOR SUMMARY JUDGMENT

Before discussing the parties' summary judgment arguments, the Court must decide whether Indiana, Tennessee or Georgia law controls. A federal court in a diversity case must apply the choice of law rules of the forum state. *Day & Zimmerman, Inc. v. Challover*, 423 U.S. 3 (1975). In a case of this type, Indiana requires this Court to apply the law of the state with the "most significant relationship" to the facts involved. *Matteler v. J.A. Jones Constr. Co.*, 457 F.2d 917 (7th Cir. 1972); *Watts v. Pioneer Corn Company, Inc.*, 342 F.2d 617 (7th Cir. 1965). The undisputed facts of the present case show that

Warren was working out of Roadway's terminal in Tennessee at the time of the accident; that Roadway paid workmen's compensation benefits and Warren accepted those benefits under Tennessee law; and that Warren was a resident of Tennessee at the time of the accident. In light of those facts, Tennessee has a more significant relationship to this case than Indiana or Georgia. The Court recognizes that there is now some confusion as to whether Indiana still follows the "most significant relationship" test. *See Sharp v. Egler,* 658 F.2d 480 (7th Cir. 1981). Even so, in their supplemental briefs, both Warren and Roadway agree that Tennessee law is controlling. The Court therefore will apply Tennessee substantive law to the issues presented.

Having decided that Tennessee law controls here, the Court first looks at Roadway's request for summary judgment on its subrogation claim. The parties agree that Tennessee law grants an employer who pays workmen's compensation benefits to an employee a subrogation lien on any proceeds obtained by the employee from a third party tortfeasor. Tenn. Code Ann. § 50-914 (1977 Repl.). Warren, however, maintains that Roadway is not entitled to its statutory subrogation lien because Warren did not make an informed election to accept benefits under Tennessee law. Warren further argues that had he been properly informed of his options, he would have claimed benefits under Georgia law, which the parties agree does not provide for a subrogation lien. Inherent in Warren's position, then, is the argument that Roadway had an affirmative duty to inform him of his various options in claiming workmen's compensation. Warren's argument is without merit.

Warren has failed to show that an employer may be denied his subrogation lien under Tennessee law where an

employee can show that he did not make an informed election to receive Tennessee workmen's compensation. Warren cites absolutely no Tennessee law in support of this argument nor can the Court locate any. None of the cases cited by Warren are applicable to the issue presented.

Warren first cites *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980). In that case, the Supreme Court held that the Full Faith and Credit Clause of the United States Constitution does not prohibit a worker from seeking supplemental workmen's compensation benefits in a second state where he recovered benefits in the first state and where the second state would have had the power to apply its workmen's compensation laws in the first instance. *Id.* at 286. The Court in *Thomas* did not impose on employers the obligation to fully inform their employees of the various options available to them. The plurality based its decision to allow successive recoveries of workmen's compensation benefits in part on its recognition of the fact that

> Compensation proceedings are often initiated informally, without the advice of counsel, and without special attention to the choice of the most appropriate forum. Often the worker is still hospitalized when benefits are sought as was true in this case. And indeed, it is not always the injured worker who institutes the claim.

Id. at 284. A fair reading of the *Thomas* case does not lend support to Warren's argument that Roadway should be denied its subrogation lien.

Warren next cites *Thomas v. Transportation Insurance Co.*, ____ Tenn. ____, 532 S.W.2d 263 (1976). The issue presented in that case was whether an employee who received benefits under Arkansas law could then recover

further benefits under Tennessee law. The court found the question of whether the employee made a binding election to accept Arkansas workmen's compensation benefits to be determinative. A court could decide if such a binding election was made by looking at whether "the employee has taken any affirmative action to seek a recovery under the law of [the other state], or has voluntarily, deliberately and with full knowledge of his options, accepted benefits under [the other state's] law. . . ." 532 S.W. 2d at 267. This holding also does not apply to the case at hand. There is no question presented here as to whether Warren is entitled to supplemental benefits. Rather, the question is whether Roadway's subrogation lien should be upheld. The Tennessee court in *Transportation Insurance* was not presented with this question and hence, did not decide it. That case also does not support Warren's argument that Roadway is not entitled to its subrogation lien.

The final case cited by Warren is *True v. Amerail Corp.*, ____ Tenn. ____, 584 S.W.2d 794 (1979). That case, like *Transportation Insurance*, involved a worker who sought supplemental benefits in Tennessee after accepting benefits in another state. The *True* court held that, absent compelling considerations as in *Transportation Insurance*, supplemental workmen's compensation benefits could not be sought in Tennessee. 584 S.W.2d at 798. The *True* court did not address the issue of whether an employer could be denied its subrogation lien when it failed to inform an injured employee of his workmen's compensation options. As with *Transportation Insurance*, then, *True* supplies no foundation for Warren's argument that Roadway has no valid subrogation lien for the workmen's compensation benefits it paid to Warren under Tennessee law.

The Court realizes that the *Transportation Insurance* and *True* cases provide an interesting analysis for deciding whether an employee has made a binding election to accept workmen's compensation benefits. However, neither of those cases hold that where an employee has not made a binding election to accept Tennessee benefits, an employer who pays such benefits is not entitled its subrogation lien. Acceptance of Warren's argument would result in unnecessary delay in the payment of workmen's compensation benefits to injured workers, for it would require an employer to research all possible filing options for each and every injured employee. Warren's argument is also contrary to the legislative intent in allowing subrogation liens which is "to reimburse an employer for payments made under a workmen's compensation award from 'the net recovery' obtained by the employee. . . to the extent of the employer's total obligation under the Compensation Act." *Beam v. Maryland Casualty Co.*, ____ Tenn. ____, 477 S.W.2d 510, 513 (1972). The Court therefore finds that Roadway is entitled to a subrogation lien on the settlement proceeds of this case to the extent of the benefits it has paid to Warren as well as "a credit on any future liability, as it accrued to the extent the net recovery collected exceeds the amount paid by the employer." Tenn. Code Ann. § 50-914. The parties are hereby given thirty (30) days in which to provide this Court with information either by stipulation, affidavit or otherwise as to the amounts paid by Roadway to Warren under Tennessee workmen's compensation law, information as to Roadway's full maximum liability under that Act, and information as to the amount recovered by Warren in this action. If Roadway's maximum liability may not be determined until the Tennessee proceeding is concluded, the parties shall so inform the Court.

Roadway next requests that summary judgment be entered in its favor on the counterclaim filed by Warren. The thrust of Warren's counterclaim is that Roadway "seized upon" a doctor's statement which opined that Warren was not permanently disabled but was able to return to work and that, based on that report, Roadway ceased paying benefits to Warren. Warren maintains that Roadway's action was done in bad faith; that Roadway breached its duties to Warren who is a third party beneficiary of a contract between Roadway and the state of Tennessee; that Roadway committed a "tort of outrage" against Warren. None of Warren's claims preclude summary judgment in Roadway's favor.

In support of its summary judgment request, Roadway argues that Warren's claim is barred by the exclusivety provisions of the Tennessee workmen's compensation laws. The rights and remedies provided under the Tennessee workmen's compensation statutes are the exclusive remedies growing out of the injury. Tenn. Code Ann. § 50-908 (1977 Repl.). Where it is found that an employer has failed to settle a workmen's compensation claim in good faith, the Tennessee laws further provide for the imposition of an interest penalty. Tenn. Code. Ann. § 50-1005 (1982 Suppl). Thus, insofar as Warren claims that Roadway has acted in "bad faith", his claim is covered by § 50-1005. *Cf. Mayes v. Genesco, Inc.*, ____ Tenn. ____, 510 S.W.2d 882 (1974). With regard to Warren's third party beneficiary and "tort of outrage" claims, however, this Court need not determine whether such claims are excluded by Tennessee workmen's compensation laws. The Tennessee courts have not decided this question and it is noted that courts of other jurisdictions are split as to whether an employee may bring a damage action where an employer ceases to pay benefits. *See* 8

A.L.R. 4th 902 (1981). Rather than decide how Tennessee courts would rule on this question this Court finds that, assuming *arguendo* that Warren's claims are not excluded, he could not recover under either of the remaining theories.

Warren may not recover under his third party beneficiary theory. It is fundamental that one may not be a third party beneficiary to a contract where there is no contract. *See generally* Corbin *Contracts* § 882 *et seq.* (1951). Warren argues that a contract exists between Roadway and Tennessee for the establishment of workmen's compensation benefits. Warren has supplied no support for this argument, however. If any contract or implied contract exists, it is between Roadway as employer and Warren as employee. *See Smith v. Van Noy Interstate Co.*, 150 Tenn. 25, 262 S.W. 1048 (1924). Warren therefore cannot sue as a third party beneficiary.

Warren may also not recover under his "tort of outrage" theory. To recover under such a theory, the defendant's conduct must be "atrocious," "utterly intolerable" and "beyond all bounds of decency." *Goldfarb v. Baker,* ____ Tenn. ____, 547 S.W.2d 567 (1977). This Court does not find Warren's allegations that Roadway disputes Warren's entitlement to benefits based on a medical opinion to be conduct that is "atrocious", "utterly intolerable" or "beyond all bounds of decency." Roadway's request for summary judgment on Warren's counterclaim is well-taken.

JUDGMENT

It is therefore ORDERED that:

1) Warren's Motion to Dismiss is DENIED;

2) Roadway's Motion for Summary Judgment is GRANTED;

3) The parties are given thirty (30) days either to stipulate as to the extent of Roadway's subrogation lien or to supply this Court with all relevant information to make such a determination.

ENTER: February 3, 1983

JUDGE, UNITED STATES DISTRICT COURT

Office Supreme Court, U.S.
FILED
JUN 9 1983
ALEXANDER L. STEVAS,

No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROADWAY EXPRESS, INC.,

Petitioner,

v.

LAWRENCE G. WARREN,

Respondent.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

JOINT APPENDIX

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Counsel for Respondent
Lawrence G. Warren

PETITION FOR CERTIORARI FILED FEBRUARY 14, 1983

CERTIORARI GRANTED APRIL 25, 1983

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Order of the Supreme Court of Georgia Transferring Application for a Discretionary Appeal to the Court of Appeals of Georgia, entered on January 7, 1982 ..... 4a

Order of the Court of Appeals of Georgia Granting Application for a Discretionary Appeal, entered on January 26, 1982 ..... 3a

Opinion of the Court of Appeals of Georgia, entered on September 16, 1982 ..... 8a

Order of the Court of Appeals of Georgia denying motion for rehearing, entered on October 6, 1982 ..... 2a

Order of the Supreme Court of Georgia denying application for certiorari, entered on November 16, 1982 ..... 1a

LIST OF DATES ON WHICH PLEADINGS WERE FILED, HEARINGS HELD, AND ORDERS ENTERED

Date

Claim for Injury at Work or Request for a Hearing 10/17/79

Notice to Controvert Payment of Compensation 11/13/79

Hearing Before Administrative Law Judge H. Grady Almand, Jr. 3/11/80

Notice of Award of Administrative Law Judge H. Grady Almand, Jr. 8/6/80

Notice of Appeal to the Full Board of Workers' Compensation of Georgia 9/5/80

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Application for Certiorari to the Supreme Court of Georgia 10/26/82

Order of the Supreme Court of Georgia Denying Application for Certiorari 11/26/82

[R-33] CLAIM FOR INJURY AT WORK
OR REQUEST FOR A HEARING

STATE BOARD OF WORKERS COMPENSATION
1800 Peachtree Street, N.W. Suite 400
Atlanta, Georgia 30309

PLEASE READ THE INSTRUCTIONS ON THE BACK OF THIS PAGE FOR HELP IN FILLING OUT THIS FORM - PLEASE PRINT OR TYPE

Lawrence G. Warren — 255-40-7275
Worker (your name) — Social Security Number

630 Spring Oaks Blvd., Altamonta, Fla. — (305) 862-2780
Worker's Address — Zip — Phone

Roadway Express, 1077 Gorge Blvd. P.O. Box 471, Akron Ohio 44309
Employer (who did you work for when you got hurt) — Address

Noble E. Pepper, 5151 Lebanon Road, Old Hickory, TN 37138
Worker's Lawyer (if you have one) — Address

The company is self insured; the Roadway Express handles the claims completely themselves. (Mr. D.L. Slaughter at Roadway Home Office, P.O. Box 471, 1077 Gorge Blvd., Akron, Ohio, 44309
Employers Workmen's Compensation Insurance Co. — Address

1. On what date were you hurt at work? *October 20, 1978*

   How much were you paid each week before deductions? *$636.00 per week*

2. Where were you hurt? *St. John (Township), Lake County, Indiana*

3. After you were hurt, did you stop working because of your injury?
   X (Yes) No

4. Have you returned to work? Yes *X* (No)

5. How were you hurt? *A. By being thrown out of my employer's truck when it was rear-ended by another truck.*

   What were you doing? *B. Driving my employer's truck on my assigned route on my employer's business.*

6. What part of your body was hurt? *My head and my back, and shaken up all over.*

7. Did you tell your supervisor, boss or employer that you were hurt at work?
   X (Yes) No

   What is the name of the supervisor who knew you were hurt? *Pete Webb or his successor, whose name I do not know.*

   What is the date you told this person you were hurt? *10/20/78*

8. What doctors or hospitals have you been to about your injury at work?

   Dr. Thomas B. Miller, 928 Gallatin Road, Nashville, TN, 37115 about 11-15-78

   Doctors at Rehabilitation Pain Clinic, 2400 Bedford Rd., Orlando, Fla., 32803 about 9/23/79

9 Did your employer have three or more workers when you got hurt? *X* (Yes) No

10 *X* Check here if you want a hearing now. *(See cover letter attached).*

   Check here if you want to file a claim to protect your rights, but do not want a hearing until later.

/s/ Lawrence G. Warren

10/15/19 /s/ Noble E. Pepper, Attorney for Lawrence G. Warren

[R-34] NOTICE TO CONTROVERT PAYMENT OF COMPENSATION

GA. FORM WC 3 (7/78)

EMPLOYER	AREA CODE-PHONE	SOC.SEC.NO.	INJURY DATE
Roadway Express, Inc.	216-384-1717	255-40-7275	10-20-78
ADDRESS			
1077 Gorge Boulevard			
CITY / STATE	ZIP		INSURER'S FILE NO.
Akron / Ohio	44309		W/C 166-1178-W

EMPLOYEE	INSURER
Lawrence G. Warren	Self-insured
ADDRESS	
630 Spring Oaks Boulevard	
CITY / STATE	
Altamonta Florida	

NOTICE IS HEREBY GIVEN IN COMPLIANCE WITH CODE SECTION 114-705(d) THAT THE RIGHT TO COMPENSATION IN THE ABOVE CASE IS CONTROVERTED ON THE FOLLOWING GROUNDS:

(1.) The Georgia State Board of Workers' Compensation lacks jurisdiction over this claim under Ga. Code § 114-411.

(2.) Claimant has accepted compensation benefits under the workers compensation laws of the State of Tennessee.

(3.) Claimant has been fully compensated for any temporary total disability he may have had and any other benefits to which he may have been entitled, and claimant is no longer disabled.

(4.) Any and all other defenses which may be permitted or presented under Title 114 at the hearing or thereafter included within the record.

This is to certify that a copy of this notice has been mailed to the following:

Lawrence G. Warren
630 Spring Oaks Boulevard
Altamonta, Florida

Mr. Noble E. Pepper
5151 Lebanon Road
Old Hickory, Tennessee 37138
His attorney at law

Roadway Express, Inc.
Insurer or Self-Insurer

By /s/ Alfred B. Adams III
Its Attorney-at-Law Title

Date November 9 1979

THIS FORM MUST BE FILED WITHIN 21 DAYS OF THE DATE OF KNOWLEDGE OF THE INJURY

Exhibit #3

GA. FORM-WC 3 (8-7)

[T-1, R-44] STATE BOARD OF
WORKERS' COMPENSATION
STATE OF GEORGIA

CLAIM No. 25?-40-7275	) Hearing held in
	)
LAWRENCE G. WARREN	) Fulton County
630 Spring Oaks Boulevard	)
Altamonta, Florida	) Atlanta, Georgia
	)
vs.	) March 11, 1980
	)
ROADWAY EXPRESS	) Before The Honorable
1077 George Boulevard	)
P.O. Box 471	) H. Grady Almand, Jr.
Akron, Ohio 44309	)
	) Administrative Law Judge
SELF-INSURED	)
	) Rptd by Leonard Kaminski

APPEARANCES:

FOR THE CLAIMANT:

NOBLE E. PEPPER, Esquire
5151 Lebanon Road
Old Hickory, Tennessee 37138

JOHN W. WINBORNE, III, Esquire
3100 Peachtree Summit
Atlanta, Georgia 30308

FOR THE DEFENDANT:

ALFRED B. ADAMS, III, Esquire
1515 Peachtree Center South
225 Peachtree Street, N.E.
P.O. Box 57006
Atlanta, Georgia 30303

[T-2, R-45] INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Lawrence G. Warren	9	31	53	55
Richard D. Danford	67	72	72	- -

-ooo-

* * * * *

[T-3, R-46] PROCEEDINGS

THE COURT: I call Claim No. 255-40-7275, Lawrence G. Warren, Employee-Claimant, versus Roadway Express, Employer, Self-Insured. Mr. Noble E. Pepper of the Tennessee Bar and Mr. John W. Winborne, III, representing the claimant and Mr. Alfred B. Adams, III, representing the defendants; and the purpose of this hearing, requested by the claimant, is to determine all Title 114 issues with respect to an injury alleged to have been sustained by him on October 20, 1978. Let's let the record show that the defendants filed a notice to controvert in this case on November 13, 1979. It may be well to also note that the claim appears to have been filed in this case on October 22, 1979.

* * * * *

[T-6, R-49] MR. WINBORNE: If it's agreeable, I would just propose that we also stipulate, or we can stipulate for the record right now that at the time of the accident Mr. Warren was a resident of Tennessee, worked out of the Roadway Express Office in Nashville, Tennessee, and the accident happened in Indiana.

MR. ADAMS: Those, I believe, all to be correct.

THE COURT: All right.

MR ADAMS: So I would agree to them.

THE COURT: And I believe he's been – if I read the [T-7, R-50] file correctly, he's been paid some compensation under Tennessee Law.

MR. ADAMS: Under the Act of Tennessee, yes, sir. I think that would be a matter of some proof, but I don't believe there's any real dispute about it.

MR. PEPPER: There's no dispute about that. We have an executed form and it is correct.

MR. ADAMS: We could go ahead and mark that and have it introduced if it's stipulated, I don't care.

THE COURT: If you can stipulate it, it'll shorten the hearing.

MR. PEPPER: Yes, I've seen that and we'll stipulate this, Your Honor.

MR. ADAMS: All right, if you'll mark that as Defendant's Exhibit No. 1.

(Document marked Defendant's Exhibit No. 1 and 2 for identification.)

MR. ADAMS: I think, Your Honor, that Defendant's Exhibit No. 1 speaks for itself as to what it is, but it is agreed that it's a properly executed stipulation under the or a form – excuse me –

THE COURT: It's an agreement, I guess.

[T-8, R-51] MR. ADAMS: Agreement for payment of compensation under the Tennessee Act; this Defendant's Exhibit No. 2 is a summary, and it is agreed to be an accurate reflection of payments made by Roadway Express to Mr. Warren for the period indicated on the exhibit under the provisions of this memorandum agreement, which is Exhibit 1.

THE COURT: All right.

MR. ADAMS: Those payments were made and the ending date is in October of '79.

THE COURT: October 12th of '79.

MR. ADAMS: Yes, sir, that was the last date a payment was made, and those are stipulations I think we can agree to.

MR. PEPPER: And that was for a period prior to 10/12/79, I believe.

MR. ADAMS: That's right.

THE COURT: 10/21/78 to 10/12/79 is what this reflects.

MR. ADAMS: That's right, I believe that's correct.

THE COURT: Any other matters that we can stipulate?

MR. ADAMS: I don't believe there are other matters [T-9, R-52] that we can stipulate.

THE COURT: All right, then, let's let all witnesses who are to testify in this case rise and raise your right hand. (Witnesses were duly sworn.)

Whereupon,

LAWRENCE G. WARREN

was called as a witness and, having been duly sworn, was examined and testified as follows:

* * * * *

[T-12, R-55] A. And at that time I was dissatisfied with certain things that came up with the other employer, and a Roadway truck pulled out of Arizona Avenue onto DeKalb Avenue in front of me and I had to stop, and on the spur of the moment I just went down Arizona Avenue and went to Roadway Express and put in an application for employment.

* * * * *

[T-14, R-57] Q. Now, when you were first employed, where did you run, Mr. Warren?

A. Mostly from Atlanta to New York, or from Atlanta to Texas.

Q. And you were stationed here in Atlanta?

A. Yes, sir.

* * * * *

[T-16, R-59] Q. You were disabled in '67. When were you able to go back to work, Mr. Warren?

A. I was disabled on March the 4th, 1967, and I returned to work on March the 9th, 1971. Four years and five days.

* * * * *

[T-17, R-60] Q. All right. Now, during the time that you were disabled, did the Roadway operation change any?

A. Yes, they had a change of operation from that Atlanta branch here. They went from a two-man operation to a single operation.

* * * * *

[T-20, R-63] A. Well, they informed us that they was cutting the board in Atlanta down to 110 drivers, if I recall correctly.

Q. Do you recall what it was being cut from?

A. Three-hundred-forty-three drivers, I think, at that time.

Q. Now, how did that board work, Mr. Warren?

A. Strictly by seniority.

Q. Where were you in seniority on the list of 340?

A. Approximately 320.

Q. All right, sir. Now, did you have an option to stay in Atlanta, according to your understanding of this correspondence?

MR. ADAMS: Now, excuse me, Your Honor, that's not a proper question. If he's asking him if he remembers anything being said in this correspondence –

MR. PEPPER: If I may rephrase that.

BY MR. PEPPER:

Q. What options were given you in the correspondence?

A. Well, we had a choice of terminals to transfer to, approximately six or seven terminals. I don't remember exactly how many. And we were to list our first choice, sec-
[T-21, R-64] ond choice and third choice of terminals which we would like to be transferred to, and if our seniority wouldn't carry us to one of those terminals, then we were forced to take a layoff letter. The layoff letter is an intent of – I think at that time it was good for either two years or three years, and then after that time you would have been unemployed, but up until the two years you would have been called back to work if your seniority called for you to return to work in the seniority order.

* * * * *

[T-23, R-66] Q. Mr. Warren, I've just handed you Claimant's Exhibit No. 2, I believe, to this record; can you identify that as reflecting your transfer to Nashville?

A. I had never seen this particular form, but it so states on here that I was present in Atlanta and proposed Nashville.

Q. And that's what happened?

A. For a change of operations.

Q. And the dates of when it happened?

A. Yes, sir.

Q. Now, Mr. Warren, at the time this occurred, were you able to go back to work?

A. At the time of the change of operations, no, sir, I wasn't.

Q. Did this occur before the settlement or before the settlement that you talked about previously?

[T-24, R-67] A. I think this occurred afterwards.

Q. Tell us what happened with respect to your disability after the settlement?

A. Well, it got worse.

Q. And what happened after that?

A. With the treatment and all, hospitalization, it got better. I was able to return to work.

Q. When you got to that status, did you make application to Roadway to return?

A. Not written application, just by phone.

Q. All right, sir. Did you go back to work?

A. Yes, sir, I did.

Q. Prior to your going back to work, was there anything that Roadway did to see if you were able or anything?

A. Yes, sir, Roadway subjected me to a two-day examination by their doctor.

Q. And where was that, sir?

A. In Nashville, Tennessee.

Q. And what was the result of that?

A. I was sound, physically fit to go back to work.

Q. All right, sir. And you returned to work where, sir?

A. In Nashville, Tennesse.

Q. Now, at that point what was your status? And I believe you testified there are three categories.

A. I was an over-the-road driver.

[T-25, R-68] Q. And where did you work there when you first reported to Nashville, I mean where did you run?

A. Mostly back to Atlanta.

Q. All right, sir.

A. Right at first.

Q. And then, just go on briefly, what happened to you on your different routes until you got to the time of this accident?

A. Well, my family was still living in Atlanta at the time, my wife and children, and I –

Q. I wanted you to go a little faster than that, in time.

A. Well, then, right away I bid this peddle run, that I was talking about, to Columbia, Tennessee, and I operated that for about four years; and then I bid Chicago and I had been running Chicago up until the time of the present accident.

MR. PEPPER: May I just have one minute, Your Honor?

(Discussion off the record.)

THE COURT: Back on the record.

BY MR. PEPPER:

Q. Who paid the expenses of your move, of your family, from Atlanta to Nashville?

A. Roadway Express paid a moving company to come in and move my furniture, and they paid me ten cents a mile to move my personal automobile, boat, and all up to
[T-26, R-69] Nashville, Tennessee.

(Document marked Claimant's Exhibit No. 3 for identification.)

BY MR. PEPPER:

Q. I believe that's a form that you never saw before, but does that reflect what occurred?

A. Well, yes, but it doesn't have the price or anything on it.

Q. It just shows the move?

A. Yeah, it shows the move and . . . well, it doesn't show it on here, but my freezer was damaged, which I was never paid for either.

Q. But that's what happened and that's the right time frame?

A. Yes, sir.

MR. ADAMS: I'm sure the statute of limitations has run on that one.

MR. PEPPER: I think I'll look that up.

THE COURT: Well, be that as it may, this court has no jurisdiction over that matter.

BY MR. PEPPER:

Q. Tell us just briefly what happened in this accident. I believe it's stipulated that it occurred – well, I don't believe we did stipulate, but it occurred in St. John's,
[T-27, R-70] Indiana?

A. On the outskirts of St. John, Indiana.

Q. It was on Route 41?

A. Yes, sir.

Q. Just tell His Honor what occurred in the accident.

A. Well, I stopped for a red light on the outskirts of St. John, Indiana; the light turned green and I had started off, and I never seen the truck coming in behind me, but I was struck from the rear by another truck, and I was thrown out of the seat of the tractor. I was thrown down. I remember topping the emergency valve to stop the truck because it was out of control, and when it stopped, I was on the ground. I can't remember how I got to the ground. I don't know if I fell or what, but the tractor had come up in the air from the rear-end collision and had turned to the right, what we call a jack-knive, and the tractor came to the right, and the door on the left side of the tractor, which was an old Mack . . . I think one of the old Macks in the system . . . the door popped open and I fell out the door.

* * * * *

[T-31, R-74] BY MR. ADAMS:

Q. Mr. Warren, I'm going to show you a series of documents and then I'm going to ask you some questions about them. Do you recognize this first exhibit as a lawsuit in Chancery Court for Davidson County, Tennessee, that's been marked as Defendant's Exhibit No. 3, that you received, this being in Acts of Congress copy from that court?

THE COURT: In a what copy?

MR. ADAMS: Acts of Congress; in other words, the clerk says it correct and the judge says the clerk is and then –

MR. PEPPER: "We'll stipulate that's the lawsuit that was filed in Chancery Court in Davison County, Tennessee. And you have an Answer there also?

MR. ADAMS: No, sir, I do not have an Answer.

MR. PEPPER: I have one.

MR. ADAMS: All I have is the certified copy, and I'm [T-32, R-75] not asking you to stipulate it. I just have it.

MR. PEPPER: All right, sir.

BY MR. ADAMS:

Q. Did you, sir, receive that lawsuit?

A. Yes, sir, I received it through the mail.

Q. Through the Secretary of State of Tennessee; is that right?

A. Yes, sir.

Q. The reason you received it through the mail is because you were then, at the time of the suit, living in Florida; is that right?

A. Yes, sir.

Q. All right, sir. I believe you agreed that at the time of the accident you were living in Tennessee; is that right?

A. Yes, sir.

* * * * *

[T-35, R-78] Q. All right, sir. Now, this Exhibit 5, is that the bid sheet for your runs beginning in '76 and up through '78? Take a minute and look at each sheet. There are several sheets there together.

A. Yes, sir, these are the bid sheets.

Q. And, of course, that's all of those times beginning in July of '76 and carrying forward to the date of the accident, you've been on the Chicago Heights run, is what it's **[T-36, R-79]** called, isn't it?

A. Yes, sir.

Q. And that takes you from Nashville to Chicago?

A. Yes, sir.

Q. And that's been your duty; is that right?

A. Yes, sir.

* * * * *

[T-37, R-80] Q. Let me try to put the question in a different way, Mr. Warren. I'm not trying to trick you or anything, I'm just trying to be clear about it. Did you hire Mr. Pepper to represent you in your suit against the garbage disposal company that hit you in that accident in '78?

A. Yes, sir, but that was before the time that me and Roadway had a dispute.

Q. Okay. So you had already hired him for a lawsuit that you filed up in Indiana in the U.S. District Court there; is that right?

A. Yes, sir.

Q. Of course, that lawsuit arose out of this same incident; is that right?

A. The most recent –

Q. The '78 accident that you're claiming for here.

A. Yes, sir.

Q. And do you understand, sir, that payments under Tennessee Law are treated the same way as the payments **[T-38, R-81]** you received in Georgia back in the '60s, that is you've got to pay them back in the event you collect that from that lawsuit?

A. No one ever discussed that with me.

Q. You don't know about that?

A. No, sir.

Q. Okay.

A. I was required to sign a form before they gave me a workmen's compensation check.

Q. This is the form that you signed, is that correct, that is your signature on Defendant's 1?

A. Yes, sir, and they withheld the checks until – they wouldn't bring it to my house, they wouldn't mail it. I had to get out of bed and have my son drive me down to the terminal, and he went up and got it and brought it downstairs and signed it and returned it.

Q. And you signed that to get benefits under the Tennessee Act; is that right?

A. I signed it for benefits under workmen's compensation. I wasn't aware of Tennessee, Georgia, or any other –

Q. Well, you were sitting in the State of Tennessee at that time, weren't you, in Nashville, Tennessee?

A. Yes, sir.

Q. And you can see where Tennessee is written all over that, can't you?

[T-39, R-82] A. Yes, Sir.

Q. You knew what you were signing, didn't you?

A. I knew it was for workmen's compensation, for my checks.

Q. You're not contending that you didn't have an opportunity to read this and examine it, are you?

A. No, I read it.

Q. All right, sir. Nobody tricked you about it, did they?

A. No, sir.

Q. Now, you came to a dispute with Roadway, is that correct, about whether you could return to your employment or not? In other words, they wanted you to come back to work and you did not want to come back to work, you didn't feel you could; is that right?

A. I don't know about a dispute. I was mailed a Mailgram through the mail stating that if I wasn't able to return to work by a certain date, that I would be terminated. Now, a dispute, no.

* * * * *

[T-40, R-83] Q. Let's start all over again. I didn't mean to confuse you. Dr. Raymond Gilmer is the orthopedic; is that right?

A. I believe so. I don't recall the name exactly.

Q. But he examined you and completed an examination on you in October of last year, was it?

A. I'm not sure of the date, but he did examine me.

[T-41, R-84] Q. Somewhere along in there?

A. Yes, sir.

Q. When did you move to Florida?

A. Last week in September.

* * * * *

Q. Okay. And then after that you got this Mailgram, which is identified as Defendant's Exhibit No. 7, did you not?

A. Yes, sir.

Q. And that instructed you to report back to work; is that correct?

A. No, sir, it instructed me to show cause why I couldn't report back to work.

[T-42, R-85] Q. All right, sir. Did you understand this was based on Dr. Gilmer's examination?

A. No, sir, I did not.

Q. Did you inquire about that?

A. I did.

Q. Isn't that when you hired Mr. Pepper?

A. No, Mr. Pepper was –

Q. I mean to handle this comp matter, I'm sorry, isn't that when you went to him and said handle my compensation cases?

A. I don't recall. I think we had discussed it before that, though.

Q. Now, I want to ask you some questions about your transfer. You were off of work when you were transferred; is that right?

A. Yes, sir.

Q. And you did not in fact return to work until – let's see, you were transferred, according to this document, that you said you were familiar with, in 19 –

A. I returned to work on March the 9th, 1971.

Q. I was going to ask you about the day you were transferred, though. Now, would you agree with the 8/17/69 date as the transfer date?

A. Well, I would have to take their word for it. I can't **[T-43, R-86]** recall the exact date.

Q. You don't have any dispute about that particular date, though?

A. No, sir.

* * * * *

[T-46, R-89] Q. You're not sure. That's all I wanted to know. Nobody coerced you or made you choose any particular terminal location; is that right?

A. No, sir, we had a choice, wherever our seniority would carry us, by the terms listed by the company. We

didn't have a choice of just any terminal in the country –

Q. I understand.

A. – we just had a list of the terminals provided and we could transfer to one of those terminals.

Q. Or stay in Atlanta?

A. Or stay in Atlanta.

* * * * *

[T-62, R-105] MR. ADAMS: Your Honor, before I proceed, I want to make certain motions. I'd like to make them for the record at this time. I'm not asking Your Honor to rule on them at this time. As a matter of fact, we will be more than happy and desirous of submitting briefs on these points.

THE COURT: I'd rather have briefs, but I'll let you make your motion on the record.

MR. ADAMS: Yes, sir, I would like to do that, if I may –

THE COURT: As briefly as you can.

MR. ADAMS: – to perfect myself, our position. Number one, we move for dismissal of this case on the basis of lack of jurisdiction of the Board to enter an award, jurisdictional basis of the Board to enter an award **[T-63, R-106]** would be predicated on several things. There would either have to be a showing of an accident in this state, which, of course, is not the case; an employee who both was – who had contracted his employment in this state and was a resident in this state, or there was a place of business in this state of the employer, and even in those circumstances, if the employment was for exclusively outside of the state, there would be no jurisdiction. I'm referring, of course, to Code Section 114-411.

THE COURT: Is it your contention that – his contract of employment was obviously entered initially in 1967, or whenever it was –

MR. ADAMS: In '63.

THE COURT: – in '63, when he went to work for Roadway –

MR. ADAMS: Yes, sir.

THE COURT: – was entered into in Georgia.

MR. ADAMS: Yes, sir.

THE COURT: Is it your contention that they entered into a new contract of employment?

MR. ADAMS: That's correct.

[T-64, R-107] THE COURT: I think I understand what your position is.

MR. ADAMS: Yes, sir. That's one contention. Another contention, of course, is that irrespective of the locus of the contract of employment, the man was not a resident of Georgia and there's been no evidence that Roadway has a place of business in Georgia on the date of this accident. Now, even if it were conceded, for purposes of discussion, that Roadway did have a place of business, we take the position and include in our motion that the place of business in the statute refers to the place of employment, and it's been clearly pointed out that this was not the place of employment of this man. That's a point that is a novel Georgia point. It's never been decided in Georgia law, to my knowledge. But irrespective of that, we say there's no evidence. Then, finally , on the 411 motion, the contract was for employment exclusively outside the State of Georgia, that is, his run between Nashville and Chicago.

THE COURT: The new contract.

[T-65, R-108] MR. ADAMS: Yes, sir.

THE COURT: I hear what you're saying.

MR. ADAMS: Yes, sir. Those are our points under 411, Your Honor. Secondly, we say – and this will require some briefing, I know, to the Court – that Mr. Warren had elected to come under the law of the State of Ten-

nessee. Tennessee has an election doctrine keyed to the contract of employment, and that when that election is made, it is the exclusive remedy of the employee under Tennessee law. We say Tennessee law applies to this case by virtue of conflicts of law principles. We also say – well, it couldn't be Georgia because Indiana is the state of the injury – we say that under any conflict of law principles that Your Honor chose to use, it could not be Georgia law applied, and that really the law that is most logical is the law of the place of contract, which is Tennessee.

THE COURT: All right. Well, let's don't go too far – I still think that you're arguing matters, which I prefer to have you argue by brief.

[T-66, R-109] MR. ADAMS: All right, sir: And then, finally, our motion is that under the full faith and credit doctrine of the United States Constitution, we're entitled to full faith and credit of the Tennessee proceedings which are in evidence.

THE COURT: All right, I'll permit you to argue those points by brief.

MR. ADAMS: We'll submit those points.

THE COURT: You're on the record as making those points.

* * * * *

[T-69, R-112] Q. All right, sir. Now, as far as that is concerned, would he have had the same wage or a greater wage in '71 than he had in '67 when he left?

A. He would have had a greater wage in '71 than he had in '67.

[T-70, R-113] Q. All right, sir. And would he have had the same or different boss or immediate supervisor?

A. He could have had a different one than he had at the time he was injured in 1968 or '67.

Q. And, of course, he would have had a different run in '71 than he had in '67?

A. That's true.

Q. Was he guaranteed to be re-employed whenever he showed up?

A. He would have been guaranteed to be re-employed if he passed a physical examination.

Q. He had to pass the physical examination?

A. That is true.

Q. And he did pass the physical examination; is that correct?

A. Yes.

Q. As shown on one of those exhibits?

A. Yes.

* * * * *

[R-120] ROADWAY EXPRESS, INC.
APPLICATION FOR EMPLOYMENT

Note: Where more space is required, use separate sheet.

DATE 3-7-1965

NAME Lawrence (First) G. (Middle) Warren (Last) SOC. SEC. NO. 255-40-7275

DATE OF BIRTH 7/10/53 ARE YOU A CITIZEN Yes

RESIDENCE ADDRESS 39.....[illegible.....].....

* * * * *

CLAIMANT'S EXHIBIT #1 3-11-80

EDUCATION

Type School	Name of School, Location	No. Years Attended	Year Finished	Graduated Yes/No
ELEMENTARY	Ed S Cook	7	1943	yes
HIGH SCHOOL	Smith High	6	1956	yes

[R-122] ROADWAY EXPRESS, INC.
EMPLOYMENT STATUS FORM

RE

Warren, L.G.
Last Name First Middle

255-40-7275
Social Security Number

XXXX
Birth Date Mo. Day Year

X MALE FEMALE

SUBMITTED BY

Signature
Signature

Relay Manager
Title

Atlanta, Georgia
Location

Atlanta, Georgia
Location

8-16-69
Date

* * * * *

CLAIMANT'S EXHIBIT #2 3-11-80

[R-125] DELIVERY RECEIPT – DESTINATION COPY

CAPITAL REQ. FINANCE NO. No. 50628

MAIL INTACT TO

DATE 7/12/71

INVOICE TO:

Greybound Van Lines, Inc. SHIP ATT. OF Fred L. Panelly

4212 N.E. Expressway DIRECT

Doraville, Georgia 30340 TO **ROADWAY EXPRESS INC.**

1077 Gorge Boulevard

illegible... Akron, Ohio 44309

CHARGE TO

Nashville, Tennessee (Driver)

THE FOLLOWING INVOICES ARE COVERED BY THIS P.O.

To cover transportation of normal household goods of our Mr. L.G. Warren from Atlanta, Georgia to Nashville, Tennesse.

This move to cover packing materials but NOT labor to pack or unpack. The expense of bolting down washer and refrigerator only at origin and destination will be covered. Moving agent to bill Radway Express for insurance to cover goods. All other expenses to be handled by the agent directly with Mr. Warren.

Estimate

/s/

PURCHASHING AGENT

HAVE RECEIVED COMPLETE THE ABOVE PURCHASED MATERIAL

/s/ 7/26/71

SIGNATURE DATE RECEIVED

RKS

CLAIMANT'S EXHIBIT #3 3-11-80

[R-153] DEPARTMENT OF LABOR
STATE OF TENNESSEE
DIVISION OF WORKMEN'S COMPENSATION
501 UNION BUILDING 2nd FLOOR
NASHVILLE, TENNESSEE 37219

DEFENDANT'S EXHIBIT
No. 1 3-10-80

January 11, 1980

I, Mildred Johnson, Director of the Division of Workmen's Compensation, Tennessee State Department of Labor, Nashville, Tennessee, do hereby certify that the copy of the Form 11, Memorandum of Agreement To Pay Compensation Under "Workmen's Compensation Act" Of Tennessee, filed in the workmen's compensation claim of Lawrence G. Warren employee of Roadway Express, Inc. injured October 20, 1978, state file number 0377-79, furnish Attorneys Stewart Estes & Donnell, Nashville, Tennessee, is a true and exact copy of the Form 11 on file in this Division.

/s/ Mildred Johnson Director
Division of Workmen's Compensation

[R-154]

Form 11 – Workmen's Compensation. 30

MEMORANDUM OF AGREEMENT TO PAY COMPENSATION UNDER "WORKMEN'S COMPENSATION ACT" OF TENNESSEE

IN RE: W/C DEC 11 1978

Roadway Express, Inc., Employer

Lawrence G. Warren, Employee

_____, Dependent

THIS AGREEMENT is made and entered into this 2nd day of November, 1978, by and between

Lawrence G. Warren
(Injured Employee or Dependent of Deceased Employee)

and Roadway Express, Inc. that in settlement of
(Employer, Insurance Company or Trustee)

compensation for injury sustained by: Lawrence G. Warren (Injured or Deceased Employee)
on or about the 20th day of October, 1978, while in the service of Roadway Express, Inc. (Employer) by an accident arising out of and in the course of said employment.

The said Lawrence G. Warren shall
(Injured Employee or Dependent of Deceased Employee)
receive compensation at the rate of $100.00 per week, the same being 60 per cent of his average weekly wages as computed according to terms of the "Workmen's Compensation Act of Tennessee," and that said compensation shall be payable from 21st day of October, 1978, until terminated in accordance with the provisions of said Act, as for total of unknown weeks.

It is herewith stated as an essential part of this Memorandum of Agreement, that its terms and provisions are in full accord with Sections 6858, 6877 and 6889 of the 1932 Code of Tennessee.

Signed /s/ L. G. Warren
Signature of Employee or Dependent

Roadway Express, Inc.
(Signature of Employer)

By /s/ R. M. Osborne
(Authorized Agent)

Witness /s/ Manager, Workmen's Compensation

NOTE: This agreement is subject to approval and review by the Judge of the Circuit Court of the County in which the claim arises, a copy to be forwarded to State Department of Labor, Division of Workmen's Compensation, Nashville, Tennessee.

[R-155]

DEFENDANT'S EXHIBIT

No. 2 3-10-80

WORKERS' COMPENSATION PAYMENTS

Our File: W/C 166-1178
Employee: Lawrence G. Warren
D/Injury: 10/20/78

Temporary Total Disability (Paid $100.00 Per Week) 10/21/78 to and include 10/12/79	$ 5,100.00
Medical Expenses Paid	$ 6,151.47
TOTAL	$11,251.47

[R-156] IN THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

ROADWAY EXPRESS, INC.,	)	
	)	
Plaintiff	)	
vs.	)	No. 79-1837-III
	)	
LAWRENCE WARREN,	)	
	)	DEFENDANT'S EXHIBIT
Defendant.	)	No. 3 3-11-80

COMPLAINT

1. Roadway Express, Inc. is a foreign corporation with a principle office in Davidson County, Tennessee.

2. Lawrence Warren on October 20, 1978 resided at 616 Albany Drive, Hermitage, Davidson County, Tennessee.

3. In the year, 1969, up to the date of an accident of October 20, 1978, Lawrence G. Warren, employee had on an average driven a tractor/trailer rig as an employee of Roadway Express from its terminal in Nashville, Tennessee to its terminal in Chicago, Illinois at least three round trips weekly. He was maintaining his residence in Davidson County, Tennessee. Subsequent to October 20, 1978, he moved to 501 Barclay Square Court, Antioch, Tennessee and as of October 2, 1979 he is either living or has a temporary address at 630 Springs Oaks Boulevard, Altamonte Springs, Florida 32701.

4. October 20, 1978, Lawrence G. Warren, employee, had an accident at or near St. Johns, Indiana when the tractor/trailer rig he was operating was rear ended by

another truck. This accident resulted in injuries arising out of and in the course of his employment. It was diagnosed by a physician at the Dyer Physicians, Inc., Dyer, Indiana that he had a cervical strain, possible cerebral concussion. Later he was released to come home to Davidson County, Tennessee and over a period of time received active medical treatment and/or examinations from Thomas Huber, M.D., and more recently in Altamonte Springs, Florida, A. Gerry Hodges M.D. and Raymond E. Gilmer, Jr., M.D. His two complaints have been of headaches and of his back. He was seen by various classifications of physicians specializing in neurologial surgery, orthopedics, internal medicine, a psychiatrist, and general practitioners.

[R-157] 5. The parties elected to come under the Workmen's Compensation laws of the State of Tennessee. An Agreement was entered into on November 2, 1978 and the required form by the Workmen's Compensation Division of the Department of Labor was executed and filed with that Department.

His temporary total disability payments have been at the rate of $100.00 per week from October 21, 1978 through October 12, 1979. He has received temporary total disability payments totalling $5,100.00. Medical expenses paid have totalled $5,254.77. As of October 2, 1979 his attending physician, Raymond E. Gilmer, Jr., M.D. of Altamonta Springs, Florida specified that he was able to return to work. Based upon that medical opinion, Roadway Express, Inc. ceased any further payments to Lawrence G. Warren.

6. Roadway Express, Inc., the employer takes the position that it has made full and complete payments under the Workmen's Compensation law and should be discharged from any further liability. That any condition which Mr. Lawrence may have either physically or mentally, relates back to two sets of accidents in the 1960's which pre-dates this accident by many years.

PREMISES CONSIDERED, COMPLAINANT PRAYS:

1. That service of process be issued to be served upon Lawrence G. Warren either at the address or residence of October 20, 1978 of 616 Albany Drive, Hermitage Tennessee or 501 Barclay Square Court, Antioch, Tennessee and under T.C.A. § 20-235, as a possible non-resident at this time, his process be served upon him through the Secretary of State at his now known address of 630 Springs Oaks Boulevard, Altamonte Springs, Florida 32701.

2. Having made election to come under the Workmen's Compensation Act of the State of Tennessee, the parties are subjected to that Act.

3. Roadway Express prays for a determination as to whether it has any further responsibilities under the Workmen's Compensation Act of the State of Tennessee for further compensation or as an alternative to be dismissed from any further benefits under the Workmen's Compensation Act of the State of Tennessee.

[R-158] 4. Defendant's oath to the Answer is waived.

5. General Relief.

STEWART, ESTES & DONNELL

BY: /s/

H. Francis Stewart
14th Fl., Third Nat'l Bank Bldg.
Nashville, TN 37219
615/244-6538

Attorney for Roadway Express, Inc.

I am surety for costs not to exceed $500.00.

/s/

H. Francis Stewart

[R-159] STATE OF TENNESSEE
SECRETARY OF STATE
NASHVILLE, TENNESSEE 37219

November 20, 1979

Hon. Raymond L. Barrett
Clerk and Master
Chancery Court of Davidson County
Nashville, Tenn.

File No. 79-1837-III

RE: Roadway Express
VS: Lawrence Warren

Dear Sir:

Enclosed are the following papers in the above styled case:

Original Summons;
Notation of Secretary of State;
Affidavit of Secretary of State;
Registered return receipt card signed by

Lawrence G. Warren

Very truly yours,

/s/ Gentry Crowell
Secretary of State

/rb
cc: H. Francis Stewart

[R-160] STATE OF TENNESSEE

SUMMONS FILE NO. 79-1837-III

TO: (1) LAWRENCE G. WARREN
630 Springs Oaks Boulevard
Altamonte Springs, FL 32701

(SERVE THROUGH SEC. OF STATE)

Your are summoned to defend a civil action filed against you entitled:

ROADWAY EXPRESS

VS.

LAWRENCE WARREN

which has been filed in Part III, Chancery Court, Davidson County, Tennessee. Your defense must be made within THIRTY (30) DAYS FROM THE DATE THIS SUMMONS IS SERVED UPON YOU. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below.

In case of your failure to defend this action by the above date, judgment by default can be rendered against you for the relief demanded in the complaint.

TESTE: First Monday In October 1979

RAYMOND L. BARRETT
Clerk and Master, Chancery Court, Davidson County, Tennessee.

Issued: November 2, 1979 By: /s/ _____
D.C. and M.

ATTORNEY FOR PLAINTIFF H. Francis Stewart, STEWART, ESTES & DONNELL

or 14th Fl. Third Nat'l Bank Bldg. Nashville, TN. 37219
Address

PLAINTIFF'S ADDRESS 615/244-6538

TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

RAYMOND L. BARRETT
Clerk and Master

Received this summons for service this 2nd day of November, 1979.

/s/ Lynn Cunningham
Special Officer

[R-161] RETURN ON SERVICE OF SUMMONS

I HEREBY CERTIFY THAT I HAVE SERVED THE WITHIN SUMMONS:

By delivering on the 6th day of November, 1979 at____. M. a copy of the summons and a copy of the Complaint to the following defendant(s) Secretary of State's Office accepting for Lawrence G. Warren.

_____ SHERIFF

By Lynn Cunningham,
Special Officer

* * * * *

Other manner of service:

11-6-79.
Patricia Duke for Gentry Crowell.

FILE NO. 79-1837-III

[R-162] AFFIDAVIT

RE: Roadway Express

VS: Lawrence Warren

I, Gentry Crowell, Secretary of State of the State of Tennessee, do hereby make oath in due form of law, as follows:

That on the 7 day of November, 1979, I duly received the original and certified copies of the summons and complaint issued against the defendant, Lawrence G. Warren, whose address is 630 Springs Oaks Blvd, Altamonte Springs, Fla. 32701. On the 9 day of November, 1979, I mailed the certified copies of the summons and complaint to the defendant, Lawrence G. Warren whose address is 630 Springs Oaks Blvd., Altamonte Springs, Fla. 32701 by registered mail with a return receipt request attached thereto, together with written notice that service was so made. I further make oath that the receipt for said registered letter was received at my office in Nashville, Tennessee on the 15 day of November, 1979. I likewise received from the plaintiff the sum of $10 and have accepted service for the day of trial, which is specified in the summons as for 30 days after service of this summons on the defendant.

/s/ Gentry Crowell

Gentry Crowell, Secretary of State

Subscribed and sworn to before me, this 20 day of November, 1979.

/s/ Edna Hogue

Edna Hogue, Notary Public

My commission expires February 7, 1981.

[R-163] I, Gentry Crowell, Secretary of State of the State of Tennessee, do hereby certify that I mailed a certified copy of this summons by registered mail to the defendant, Lawrence G. Warren, whose address is 630 Springs Oaks Blvd., Altamonte Springs, Fla. 32701 on the 9 day of November, 1979 as set out in the affidavit hereto attached, and I further certify that the return receipt for said registered letter was received at my office in Nashville, Tennessee, on the 15 day of November, 1979

Returned to Chancery Court of Davidson County of Nashville, Tennessee, on the 20 day of November, 1979.

/s/ Gentry Crowell

Gentry Crowell, Secretary of State

FILED

1979 NOV 26 AM 10:04

[R-164] STATE OF TENNESSEE

SUMMONS FILE NO. 79-1837-III

TO: (1) LAWRENCE G. WARREN
630 Springs Oaks Boulevard
Altamonte Springs, FL 32701

(SERVE THROUGH SEC. OF STATE)

Your are summoned to defend a civil action filed against you entitled:

ROADWAY EXPRESS

VS.

LAWRENCE WARREN

which has been filed in Part III, Chancery Court, Davidson County, Tennessee. Your defense must be made within THIRTY (30) DAYS FROM THE DATE THIS SUMMONS IS SERVED UPON YOU. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below.

In case of your failure to defend this action by the above date, judgment by default can be rendered against you for the relief demanded in the complaint.

TESTE: First Monday In October 1979

RAYMOND L. BARRETT
Clerk and Master, Chancery Court, Davidson County, Tennessee.

Issued: November 2, 1979 By: /s/ _____
D.C. and M.

ATTORNEY FOR PLAINTIFF H. Francis Stewart, STEWART, ESTES & DONNELL

or

14th Fl. Third Nat'l Bank Bldg.
Nashville, TN. 37219
Address

PLAINTIFF'S ADDRESS 615/244-6538

TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

RAYMOND L. BARRETT
Clerk and Master

Received this summons for service this ____day of _____ 19____.

_____

[R-165] ACTS OF CONGRESS
CERTIFICATE

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, ROBERT S. BRANDT, Presiding Chancellor for the Seventh Chancery Division, Part Three, of the State of Tennesse holding Court at Nashville, do hereby certify that RAYMOND L. BARRETT whose genuine signature appears to the foregoing certificate is now, and was at the time of signing the same, the duly appointed and qualified Clerk and Master of the said Court, (which is a Court of Record) and that all his acts and deeds as such are entitled to full faith and credit; and that said attestation is in due form of law.

Witness my hand in Court, at Nashville, this 10th day of January, 1980.

/s/ Robert S. Brandt
CHANCELLOR

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I, RAYMOND L. BARRETT, Clerk and Master of the Chancery Court of said County, do hereby certify that ROBERT S. BRANDT, whose genuine signature appears to the foregoing certificate, is now, and was at the time of the signing of the same, sole presiding chancellor of Part Three of the Chancery Court, in and for said County, duly elected, commissioned and qualified as such; and that attestation is in due form of law.

Witness my hand and seal of said Court, at office, this the 10th day of January, 1980

/s/ Raymond L. Barrett

CLERK AND MASTER

[R-166] SENDER: Complete Items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is required (check one).
   Show to whom and date delivered
   RESTRICTED DELIVERY
   Show to whom and date delivered 1.25

2. Article addressed to Lawrence G. Warren
   Altamonte Springs, Fl. 32701

Registered No. 191-619

I have received the article described above

SIGNATURE
/s/ Lawrence G. Warren

DATE OF DELIVERY
11-13-L/L

FILED
1975 NOV 28 AM

[R-167] CERTIFICATE OF THE CLERK AND MASTER

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, RAYMOND L. BARRETT, Clerk and Master of the Chancery Court of Davidson County, Tennessee, do hereby certify thatr the foregoing is a full, true and correct copy of the Complaint filed November 2, 1979, at 8:55 a.m., Summons issued on the 2nd day of November, 1979 to Lawrence G. Warren, Summons issued to the Secretary of State on the 2nd day of November, 1979, Affidavit and return receipt of the Secretary of State received filed November 26, 1979, of said Court, in the cause wherein ROADWAY EXPRESS, INC., PLAINTIFF, AND LAWRENCE WARREN, DEFENDANT, File number 79-1837-III, as the same appears of record and now on file in my office. The defendant has not filed an answer as of this day.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said Court at my office in the Courthouse at Nashville, Tennessee, this the 10th day of January, 1980 and the 204th year of American Independence.

RAYMOND I. BARRETT, CLERK AND MASTER

BY /s/
DEPUTY CLERK AND MASTER

RAYMOND L. BARRETT

BY /s/
CLERK AND MASTER

[R-168] STATE OF TENNESSEE

SUMMONS FILE NO. 79-1837-III

TO:

LAWRENCE G. WARREN

616 Albany Drive

Hermitage, TN

OR

LAWRENCE G. WARREN

#501 Barclay Square Court

Antioch, TN 37013

Your are summoned to defend a civil action filed against you entitled:

ROADWAY EXPRESS

Complainant

VS.

LAWRENCE WARREN

Defendant

which has been filed in Part III, Chancery Court, Davidson County, Tennessee. Your defense must be made within THIRTY (30) DAYS FROM THE DATE THIS SUMMONS IS SERVED UPON YOU. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below.

In case of your failure to defend this action by the above date, judgment by default can be rendered against you for the relief demanded in the complaint.

TESTE: First Monday In October 1979

RAYMOND L. BARRETT
Clerk and Master, Chancery Court, Davidson County, Tennessee.

Issued: November 2, 1979 By: /s/ _____
D.C. and M.

ATTORNEY FOR PLAINTIFF H. Francis Stewart, STEWART, ESTES & DONNELL

or 14th Fl., Third Nat'l Bank Bldg. Nashville, TN 37219; 615/244-6534

Address

PLAINTIFF'S ADDRESS

TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

RAYMOND L. BARRETT
Clerk and Master

Received this summons for service this 4 day of Nov. 1979.

/s/

Raymond L. Barrett – Chancery Form

[R-169] RETURN ON SERVICE OF SUMMONS

* * * * *

I hereby certify that I have NOT served this Summons on the within named defendant(s) Lawrence Warren because he is (are) not to be found in this County for the following reasons: moved to Florida.

This 29 day of Nov., 1979 _____/s/ SHERIFF
By /s/ Deputy Sheriff

FILE No. 79-1837-III

[R-171] **ROADWAY EXPRESS, INC.**
Inter-Office Memorandum

TO: Nashville Road Drivers FROM: H.D. Webb

SUBJECT: Bids Awarded OFFICE: 974 DATE: 7/7/76

COPIES: Local 480
C. Houston 962
File

The bid runs posted for observation and bid on 6/1/76 were awarded in accordance with seniority to the following road drivers. These new bids become effective 00.01 Monday July 12, 1976.

CHICAGO HEIGHTS, ILL.
MON. WED. FRI.
0.0 — C.H. Wallace
0.0 — G.H. Farmer
1.0 — G.E. Toler
2.0 — G.A. Murphy
5.0 — L.G. Warren
8.0 — J.F. Hohlier
TUES. THURS. SAT.
0.0 — W.J. Adcock
0.0 — J.L. Teeple
1.0 — R. Mattox
2.0 — R. Hovis
3.0 — J. Farley
4.0 — W.T. Jenkins
5.0 — J. Pherigo
WED. FRI. SUN.
2.0 — J.K. Cade
3.0 — F.I. Haynes
4.0 — G.L. Xeid
6.0 — E.E. Blankenship
7.0 — W. Kommer
9.0 — B.W. Farmer
10.0 — O.E. Felue
THURS. SAT. MON.
6.0 — J.R. Reynolds
7.0 — R.K. Stewart
8.0 — C.R. Odonald
10.0 — R. Duncan

GREENVILLE/CHARLOT
WED. FRI. SUN.
8.0 — J.B. Wright
10.0 — D. Gregory
4.0 — G. Hooie
8.0 — A.L. Leach
10.0 — W.C. Gibbs

MEMPHIS, TENN.
TUES. THRU. SUN.
0.0 — I.R. Gambill
0.0 — J.T. Williams
1.0 — V.C. Miles
WED. THRU. MON.
4.0 — W.C. Waldrop
7.0 — L.T. Smith
9.0 — F.L. Hindman

BIRMINGHAN, ALA.
MON. THRU. SAT.
0.0 — T.S. Lane
WED. THRU. MON.
2.0 — R.L. Pendleton
4.0 — O.E. Wicks
5.0 — W.R. Sanford
6.0 — N. Dillard

ATLANTA, GA.
MON. THRU. SAT.
12.0 — T.S. Crumpton
13.0 — R.C. Deckard
TUES. THRU. SUN.
14.0 — J.H. Breitenbach
15.0 — N.J. Noffsinger
16.0 — J. Bradford
17.0 — J.G. Golden

CHICAGO, ILL.
MON. WED. FRI.
4.0 — O.C. Haislip
TUES. THURS. SAT.
8.0 — B. Wyatt

ST. LOUIS, MO.
MON. WED. FRID.
4.0 — H.L. Dunagan
WED. FRI. SUN.
0.0 — J.M. Payne
1.0 — S.H. Jones
2.0 — N.D. Morris
3.0 — J.T. Carter
5.0 — C.F. Green
THURS. SAT. MON.
0.0 — J.H. George
1.0 — J.L. McMillan
3.0 — M.E. Haynes
6.0 — V. Clifton
8.0 — S.K. Slatton

BOWLING GREEN, KY.
06.0 — G. Poole

COLUMBUS, OHIO
SUN. TUES. THURS.
5.0 — P.W. Moore
8.0 — J.J. Power
MON. WED. FRI.
6.0 — O.T. Reed

TOLEDO, OHIO
WED. FRI. SUN
0.0 — J. Harshbarger
4.0 — F. Mason
8.0 — C. Boone
THRUS. SAT. MON.
0.0 — A. Golladay
4.0 — K. Owens
8.0 — B. Swytt

DEFENDANT'S
EXHIBIT
No. 5 3-11-80

[R-176] PHYSICAL EXAMINATION
OF DRIVERS
(AMD DOCTOR'S CERTIFICATE)

Date 3-8-71 Nashville

Name Warren (Last) Lawrence (First) G. (Middle)

Personal Address 4105 (Number) Liningy (Street) Decatur (City) Ga. (State)

Birth 7-10-33

* * * * * (Illegible).....

DEFENDANT'S
EXHIBIT

No. 6 3-11-80

[R-178] **ROADWAY EXPRESS, INC.**
EMPLOYMENT STATUS FORM

ROADWAY EXPRESS, INC.

Warren, Lawrence G.
Last Name First Middle

255-40-7275
Social Security Number

7/10/33
Birth Date Mo. Day Year

Nashville
Location

X MALE FEMALE

SUBMITTED BY

Signature
Signature

Relay Manager
Title

Nashville, Tenn.
Location

March 10, 1971
Date

* * * * *

Defendant's Exhibit
No. 8 3-11-80

SECTION I – EMPLOYMENT

X Reinstatement Return work from extended sick leave
Show type of absence from which reinstated.
Physical papers to follow.
Letters from 2 doctors & copy ICC card At

X Regular 1. White X

Job Classification Road Driver X Exempt - Not Paid for Overtime

Date placed on A.G.O. payroll 3/9/71 Seniority Date Different 3/23/63

Rate of Pay $ union Rate Range scale Min. Scheduled Hours Un-schedule

SECTION II – CHANGE IN COMPENSATION, JOB CLASSIFICATION OR TRANSFER

Recommended Effective Date XXX

* * * * *

[R-181]

NATIONAL MASTER FREIGHT AGREEMENT

Covering

OVER-THE-ROAD

and

LOCAL CARTAGE

EMPLOYEES OF PRIVATE COMMON, CONTRACT AND LOCAL CARTAGE CARRIERS

For the Period of APRIL 1, 1967

Through

MARCH 31, 1970

DEFENDANT'S EXHIBIT

No. 9 3-11-80

[R-298] * * * * *

Section 5 Peddle Runs Peddle runs shall be defined as those that originate and terminate at the home terminal in the same tour of duty, and/or within a radius of seventy-five (75) miles of the home terminal.

* * * * *

[R-456] IN THE STATE BOARD
OF WORKERS' COMPENSATION
STATE OF GEORGIA

LAWRENCE G. WARREN,	:	
Claimant	:	CLAIM NO. 255-40-7275
	:	
vs.	:	D/A: October 29, 1978
	:	
ROADWAY EXPRESS, INC.,	:	
Employer and	:	
Self-Insured	:	

NOTICE OF APPEAL

Comes now ROADWAY EXPRESS, INC., employer and self-insurer, and appeals the award of Administrative Law Judge H. Grady Almand, Jr., entered on August 6, 1980, to the Full Board of Workers' Compensation, and as grounds thereof, avers as follows:

* * * * *

[R-457]

8.

The award is unconstitutional because the Administrative Law Judge failed to give full faith and credit to a prior award of compensation entered in the State of Tennesse and thereby violated Article IV Section I of the Constitution of the United States.

9.

The award is unconstitutional because the Administrative Law Judge denied the employer and self-insured property without due process of law and thereby violated Article I Section I Paragraph I of the Constitution of the State of Georgia of 1976 and the Fourteenth Amendment of the Constitution of the United States.

* * * * *

[R-461] IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA

LAWRENCE G. WARREN,	:	
Claimant	:	CLAIM NO. 255-40-7275
	:	
vs.	:	D/A: October 29, 1978
	:	
ROADWAY EXPRESS, INC.,	:	CIVIL ACTION
Employer and	:	FILE NO.:
Self-Insured.	:	

ROADWAY EXPRESS INC.'S NOTICE OF APPEAL TO THE SUPERIOR COURT OF FULTON COUNTY

Comes now Roadway Express, Inc., employer and self-insurer, and pursuant to the provisions of Ga. Code Ann. § 114-710 appeals the Award and Order of the Full Board of the State Board of Workers' Compensation entered on January 8, 1981 to the Superior Court of the County of Fulton, and shows the Court the following:

* * * * *

[R-462] 6.

The members of the State Board of Workers' Compensation acted without or in excess of their powers when they failed to give full faith and credit to a prior award of compensation entered in the State of Tennessee and thereby violated Article IV Section I of the Constitution of the United States.

7.

The members of the State Board of Workers' Compensation acted without or in excess of their powers when they denied Roadway Express, Inc. property without due process of law and thereby violated Article I, Section I, Paragraph I of the Constitution of Georgia of 1976 and the Fourteenth Amendment of the Constitution of the United States.

* * * * *

Office-Supreme Court, U.S.
FILED
MAR 21 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ROADWAY EXPRESS, INC.,
Petitioner,

V.

LAWRENCE G. WARREN,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

EDGAR A. NEELY, JR.
(Counsel of Record)
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NOBLE E. PEPPER
5151 Lebanon Road
Old Hickory, Tennessee 37138
(615) 889-2214

March 18, 1983

QUESTIONS PRESENTED

1. Whether the Georgia courts gave constitutionally required full faith and credit to Tennessee law in awarding Respondent supplemental workers' compensation benefits under Georgia law after Respondent previously received workers' compensation benefits under Tennessee law.

2. Whether Georgia had sufficient contact with Respondent's employment by Petitioner for the Georgia courts to satisfy due process in awarding Respondent supplemental workers' compensation benefits under Georgia law.

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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ROADWAY EXPRESS, INC.,

Petitioner,

V.

LAWRENCE G. WARREN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

STATEMENT OF THE CASE

I.

PROCEEDINGS BELOW

On October 20, 1978, Lawrence G. Warren (hereinafter referred to as "Claimant") was injured in an accident in Indiana while driving a truck for Roadway Express, Inc. (hereinafter referred to as "Petitioner"). He received workers' compensation benefits in Tennessee until October 12, 1979. Claimant then filed for benefits under the Georgia Workers' Compensation Act. After a hearing, the Administrative Law Judge issued an award on August 6, 1980, which award found Georgia's State Board of Workers' Compensation to have jurisdiction over the claim and found Claimant to have been disabled continuously from the date of the accident; the award

directed the Petitioner to pay Claimant weekly disability benefits and medical benefits under Georgia law and allowed Petitioner an appropriate credit for all amounts previously paid pursuant to Tennessee law.

Petitioner appealed this award to the chairman and two directors of the State Board of Workers' Compensation which affirmed the original award on January 8, 1981. Petitioner then appealed to the Superior Court of Fulton County, Georgia which affirmed the decision of the State Board of Workers' Compensation of Georgia in an order dated December 1, 1981.

On December 31, 1981, Roadway Express, Inc. filed its application for appellate review to the Supreme Court of Georgia. By order dated January 7, 1982, the Supreme Court of Georgia ordered that this application be transferred to the Court of Appeals of Georgia. The Court of Appeals granted Roadway's application for appellate review by order dated January 26, 1982. Pursuant to this order, Roadway Express, Inc. filed its notice of appeal to the Court of Appeals on January 29, 1982.

On September 16, 1982, the Court of Appeals of Georgia affirmed the previous awards and orders. Petitioner's Motion for Rehearing was denied on October 7, 1982; its Application for Certiorari to the Supreme Court of Georgia was denied on November 16, 1982.

II.

STATEMENT OF FACTS

Claimant filled out a written application for employment at Petitioner's office in DeKalb County, Georgia in March 1963 and was hired at that time as an over-the-road truck driver operating out of Atlanta, Georgia; he

drove to and through various states in the eastern part of the United States. Claimant was injured in 1967 and drew workers' compensation benefits from 1967 through 1971.

In 1969, during this four year period of disability when Claimant was not actively working for Petitioner, Petitioner changed its method of operation from two drivers per truck to one. At the time of this change in operations, Petitioner had 343 truck drivers operating out of Atlanta, Georgia and Claimant was number 320 on the seniority list. Claimant was offered a choice of job locations at the time of this change of operations *if* his seniority would permit him to be accepted at such job locations. If Claimant had made choices which were cut off by the seniority system, he would have been placed in a lay-off status. Accordingly, because Claimant was worried that he would be too low in seniority in Atlanta whenever he might be able to return to work and was worried that he might not be on the payroll at that time, he listed Nashville, Tennessee as his first choice. Then, on August 16, 1969, Petitioner executed an "employment status form" which mentioned nothing about "reemployment" but placed the words "change of operations" after the words "justification . . . for transfer."

Claimant remained in Atlanta until 1971 when his disability from his 1967 accident ended. Petitioner refers to this return to work exclusively as "reemployment"; such terminology ignores the facts of the return to work as well as Petitioner's own "employee status form" of March 10, 1971. That form makes reference to a "return to work from extended sick leave." It gives the seniority date as March 23, 1963. Furthermore, Petitioner checked the block labeled "reinstatement" and not the blocks labeled "new hire" and "rehire."

When Claimant returned to work at the Nashville terminal in 1971, his initial truck driving was primarily from Nashville to Atlanta, Georgia. Then, for four years, his primary route was from Nashville to another city in Tennessee. Claimant sustained the subject injury on October 28, 1978 in Indiana while on his then regular run from Nashville to Chicago.

Soon after the accident, Claimant signed workers' compensation forms providing for payment of benefits under Tennessee law. The circumstances surrounding the signing of these forms are described in the following testimony of Claimant:

> A. I was required to sign a form before they gave me a workmans' compensation check.
>
> . . . .
>
> Q. And you signed that to get benefits under the Tennessee Act; is that correct?
>
> A. I signed it for benefits under workmans' compensation. I wasn't aware of Tennessee, Georgia or any other—

Petitioner unilaterally suspended benefits on October 12, 1979. Following this suspension of benefits, Claimant initiated the Georgia Workers' Compensation claim which is the subject of the case at bar.

SUMMARY OF ARGUMENT

The exercise of jurisdiction by the Georgia courts over Claimant's workers' compensation claim against Petitioner did not violate the Full Faith and Credit Clause of the Constitution. The plurality in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980), held that full faith and credit does not preclude successive workers' compensa-

tion awards. The concurring opinion in that case followed *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622 (1947), which held that only unmistakable language of a state's statutes or judicial opinions barring supplemental awards in other states gives rise to a full faith and credit defense to any such supplemental award. Neither Tennessee's statutes nor its judicial opinions contain such unmistakable language; accordingly, full faith and credit did not bar the Georgia courts' exercise of jurisdiction over Claimant's workers' compensation claim.

The Due Process Clause of the Constitution does not prohibit the Georgia courts' exercise of jurisdiction over the subject claim. The significant contact test set forth in *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981), has been more than satsified by the existence of a Georgia employment contract which has governed the employment relationship between Claimant and Petitioner since 1963. Furthermore, Claimant worked in Georgia for several years and, following his transfer to Tennessee, continued employment related travel to Georgia for a period of time.

ARGUMENT AND CITATION OF AUTHORITY

Rule 17.1 of this Court sets forth examples of those types of cases for which the granting of certiorari might be appropriate. Petitioner restricts its arguments to contentions that the decision of the Georgia Court of Appeals "is in direct conflict with constitutional authority set forth in decisions of this Court" and invites this Court "to further clarify the full faith and credit effect of workers' compensation decisions" since *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980). To the contrary, as will be shown in this brief, the Court of Appeals

of Georgia correctly decided this workers' compensation matter within the constitutional guidelines as set by this Court. Furthermore, the decision of the Court of Appeals of Georgia was correct regardless of one's interpretation of *Thomas* and, accordingly, no clarification of that case would either be needed or appropriate.

I.

THE FULL FAITH AND CREDIT CLAUSE DOES NOT PRECLUDE A SUPPLEMENTAL AWARD UNDER THE GEORGIA WORKERS' COMPENSATION ACT AFTER PAYMENT OF BENEFITS UNDER THE TENNESSEE ACT.

A. Acceptance of Benefits Under One State Act Does Not Preclude Recovery of Supplemental Benefits Under Another State Act.

Contrary to Petitioner's argument, the plurality opinion in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) held that the Full Faith and Credit Clause of th Constitution (U.S. Const. art. IV, § 1) does not requir one state to deny workers' compensation benefits under that state's law because of an award in another state. In *Thomas*, the Claimant sought a workers' compensation award in the District of Columbia after he had already received a Virginia award. The Court found that the District of Columbia was not precluded under the Full Faith and Credit Clause from making a supplementary award under the District of Columbia Workers' Compensation Statute. Instead, the Court found that full faith and credit only required the District of Columbia to recognize and give the employer credit for the award granted under the Virginia statute. The Court reasoned that the Virginia court had no authority to pass on the petitioner's rights under the District of Columbia law.

Therefore, there was no reason to object to a fresh adjudication of claimant's rights under that law in a hearing in the District of Columbia. 448 U.S. at 282-283.

The interest of Tennessee in not having its law "thwarted" by the Georgia courts is not infringed upon by the Georgia courts making a separate determination of Mr. Warren's rights under Georgia law. As with the Virginia courts' determination in *Thomas*, the Tennessee courts had no authority to determine the claimant's rights under Georgia law. [1] Full faith and credit need only be given to the determination which the Tennessee courts had the authority to make. Therefore, under the rationale in *Thomas*, there can be no constitutional objection to a fresh adjudication of the claimant's rights under Georgia law.

The Court in *Thomas* specifically found that a state did not have the authority to give extraterritorial effect to awards under its own workers' compensation statute. The Court stated:

> To vest the power of determining the extraterritorial effect of a State's own laws and judgments in the State itself risks the very kind of parochial entrenchment on the interest of other States that it was the purpose of the Full Faith and Credit Clause and other provisions of Article IV of the Constitution to prevent.

---

[1] The Court stated:

> Typically a workmens' compensation tribunal may only apply its own state's law. In this case, the Virginia Commission could and did establish the full measure of petitioner's rights under Virginia law, but it neither could nor purported to determine his rights under the law of the District of Columbia.

448 U.S. at 282.

Id. at 272. Thus, under the rationale in *Thomas*, Tennessee law constitutionally cannot exclude supplemental awards in other states.

Petitioner argues that the plurality opinion in *Thomas* advocates a balancing of interest test to determine whether a second governmental entity could constitutionally provide benefits to a workers' compensation claimant. The plurality in *Thomas*, in fact, holds that the second governmental entity must meet a threshold level of interest in order to apply its law; no balancing test is provided. The threshold set by the Court is shown in the following holding:

> We therefore would hold that a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award *when the second State would have had the power to apply its workmen's compensation law in the first instance.* The Full Faith and Credit Clause should not be construed to preclude successive workmen's compensation awards. (emphasis added)

Id. at 286.

In the instant case, Claimant unquestionably was eligible to receive benefits under the Georgia Workers' Compensation Act.[2] Therefore, the Full Faith and Credit Clause does not constitutionally prohibit Georgia's State Board of Workers' Compensation from awarding him benefits subsequent to the unilateral termination of

---

[2] The decision of the Georgia Court of Appeals affirmed the liability of Petitioner to Claimant for workers' compensation benefits under Georgia law. The only issues raised by Petitioner in this Court are the constitutional questions of due process and full faith and credit; therefore, neither Claimant's disability nor Claimant's meeting of other prerequisites to receiving Georgia workers' compensation benefits are at issue in this Court.

benefits by Petitioner in Tennessee. Under *Thomas*, the Georgia Board could adjudicate Claimant's rights under Georgia law. Full faith and credit only bars the Georgia Board from redetermining Mr. Warren's rights under Tennessee law.

B. Even If the Plurality in *Thomas* Is Not Found to Be Determinative of the Full Faith and Credit Issue, the Prior Receipt of Tennessee Benefits Did Not Bar Supplemental Georgia Benefits.

While the plurality in *Thomas* presented a new analysis of the extraterritorial effect of workers' compensation awards, the Georgia courts were authorized to make a supplemental award under the law which existed prior to *Thomas* and which was followed by the three Justices concurring in that case. In *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622 (1947),[3] the Court held that the extraterritorial effect under full faith and credit would only be given where there was some unmistakable language by a state legislature or judiciary which would warrant accepting such a construction. *Id.* at 628. Petitioner erroneously cites the cases of *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979), and *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931), for the proposition that the Tennessee judiciary has stated that under Tennessee law a claimant makes a irrevocable election to proceed under the workers' compensation law of the state in which he first receives benefits. In both of those cases, the court considered a

[3] *McCartin* has been recognized at least to have limited severely the holding in Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1931). *See, e.g.*, Thomas v. Washington Gas Light Co., supra. Subsequent State cases overwhelmingly followed *McCartin* and applied the "unmistakable language" test in permitting successive workmen's compensation awards. *Id.* at 276, n. 22.

situation where the claimant had received benefits in another state and then applied for benefits in Tennessee. Thus, no unmistakable statement of the extraterritorial effect of *Tennessee law* was or could have been made in those cases. In addition, the court in *True* specifically rejected the proposition that full faith and credit barred the subsequent Tennessee claim. Citing *McCartin*, the court stated:

> While the trial judge did not specifically sustain so much of the motion for summary judgment as relied upon the full faith and credit clause, *lest there by any confusion about the matter, we hold that the full faith and credit clause does not preclude the Tennessee suit.* (emphasis added)

584 S.W.2d at 798. Thus, the unmistakable language required under the rule in *McCartin* is not apparent in Tennessee law. Petitioner's reliance on an alleged "irrevocable election doctrine" in Tennessee is clearly misplaced.

C. Claimant's Acceptance of Tennessee Benefits Did Not Constitute a Determination of the Existence of a Tennessee Contract of Employment.

The decisions of the Georgia courts in this case found and affirmed that Claimant entered into only one employment contract with Petitioner and that said contract was made in Georgia in 1963. Such a finding was necessary to fix jurisdiction in Georgia.[4] Petitioner now argues that those findings violated the principles of *res judicata*

---

[4] Off. Code of Ga. Ann. § 34-9-242 (1981) [Ga. Code Ann. § 114-411 (1933)] requires that an employee who is injured in another state is entitled to Georgia benefits if, *inter alia*, "the contract of employment was made in this State. . . : Provided, his contract of employment was not expressly for service exclusively outside of the State: . . ."

because the acceptance of Tennessee workers' compensation benefits "constitutes a finding that his contract of employment was entered into in Tennessee." More specifically, Petitioner cites Tenn. Code Ann. § 50-917 which requires *either* that the contract for hire be made in that State *or* that a claimant's employment was "principally localized within this State;" then Petitioner makes the erroneous statement that the "majority of Claimant's duties for [Petitioner] occurred outside of Tennessee on his run to Chicago." This argument is unfounded for several reasons.

First, immediately after his transfer to Tennessee from Georgia, the Claimant's truck driving was primarily from Nashville, Tennessee to Atlanta, Georgia. Then, as found by Georgia's State Board of Workers' Compensation, the Claimant had a run from Nashville, Tennessee to Columbia, Tennessee "for the next four years." In addition, even when the Claimant was on the "Chicago run" from Nashville, where was his employment "principally localized?" It surely was not "localized" in Kentucky or Indiana through which he drove to get to Chicago. The remaining choices are Tennessee and Illinois; the Claimant's supervisors were in Tennessee, the terminal out of which he operated was in Tennessee, and he lived in Tennessee. Accordingly, it is obvious that Claimant's employment was "principally localized" in Tennessee.

Second, Plaintiff's argument ignores the fact that there was no Tennessee adversary proceeding which could have been the basis for the application of the theory of *res judicata*. Neither the issue of the existence of a Tennessee contract of employment nor the issue of the principal location of Claimant's employment had ever been litigated; therefore, the most fundamental prerequisite for

the application of the theory of *res judicata*—a full and fair opportunity to litigate a claim or issue—is lacking.[4]

No action taken in Tennessee either by Petitioner or Claimant could have been the basis for raising either full faith and credit or *res judicata* as bars to prevent the Georgia courts from making a determination of Claimant's rights under the Georgia Workers' Compensation Act. Both the plurality's approach in *Thomas* and the holding in *McCartin* sanction the Georgia courts' entertaining of Petitioner's claim and awarding of benefits to him.

II.

SUFFICIENT CONTACT EXISTED WITH THE STATE OF GEORGIA FOR THE GEORGIA COURTS CONSTITUTIONALLY TO APPLY GEORGIA'S WORKERS' COMPENSATION STATUTE.

Georgia had significant contact with Claimant's employment, and, therefore, could constitutionally apply its substantive law under the principles set forth in *Alaska Packers Ass'n v. Industrial Accident Commission*, 294 U.S. 532 (1935), and *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981). In *Alaska Packers* the Court upheld California's application of its workers' compensation act for a non-resident who was hired in California for work in Alaska. The Court found that the choice of California law was not "so arbitrarily unreasonable as to amount to a denial of due process". 294 U.S. at 542. In the instant case, the contract of employment was signed in Georgia and the employee worked out of Atlanta for four years.

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[4] Kremer v. Chemical Construction Corp., ___ U.S. ___, 102 S.Ct. 1883, 1897, n. 22 (1982).

Claimant was then given an extended leave for an injury before he was transferred to Nashville. Contrary to Petitioner's assertions, there was no reemployment but merely a reactivation to working status. No new employment contract was ever signed; nor was any reference made to reemployment. The record is clear that Claimant's employment was never terminated by Roadway. At all times he worked under his original employment contract which was signed in Georgia. Certainly, then, the application of Georgia law was not arbitrary; nor did it deny due process.

The interest of a state in protecting the rights of workers hired in that state is without question. *See, e.g., Alaska Packers.* Petitioner correctly recites the standard stated in *Hague* to satisfy due process. In order for the forum state to apply its substantive law in a constitutionally permissible manner, it must have a significant contact or aggregation of contacts. 449 U.S. at 308. The mere fact that the Claimant was stationed in Nashville after returning from his leave does not lessen the interest of Georgia in protecting that employee. In *Alaska Packers*, the Court stated:

> But where the contract is entered into within the state, even though it is to be performed elsewhere, its terms, its obligations and its sanctions are subject in some measure, to the legislative control of the state. The fact that the contract is to be performed elsewhere does not of itself put these incidents beyond the reach of the power which a state may constitutionally exercise.

294 U.S. at 540-541.

Petitioner has incorrectly relied on the cases of *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930), and *John Hancock Mutual Life Isnsurance Co. v. Yates*, 299 U.S.

178 (1936), for the proposition that the application of Georgia law under Off. Code of Ga. Ann. § 34-9-242 (1981) [Ga. Code Ann. § 114-411 (1933)] was unconstitutional. While it is true that in *Dick* and *Yates* the Court found that significant contacts did not exist, these cases are not applicable here. As pointed out in *Hague*, the Court in *Dick* and *Yates* considered the situation where the forum state had only an insignificant contact with the parties and the occurrence or transaction. Under those circumstances, nominal residence in *Dick* and a post occurrence change of residence to the forum state in *Yates*, the Court found that application of the forum state's law was unconstitutional. In the instant case, the contacts with Georgia are far from insignificant. The contract for employment was signed in Georgia. The employee worked in Georgia for several years and received benefits in Georgia for a previous injury. It was only on returning to work that Claimant reluctantly transferred to Nashville, Tennessee. In applying Georgia law, the Georgia courts rightfully protect workers who sign contracts of employment in that State. The transfer to Tennessee did not cut off Georgia's established interest.

As was true with Allstate Insurance Company in *Hague*,[4] Petitioner at all times has been present and doing business in Georgia. Thus, Petitioner cannot claim unfamiliarity with the laws of Georgia nor surprise that Georgia courts would apply forum law. Because Petitioner was aware that Claimant was hired in Georgia, was employed in Georgia for a significant portion of the time he was associated with the company, and received workers' compensation benefits in Georgia as a result of his 1967 accident, Petitioner must have anticipated that

---

[4] 449 U.S. at 317.

forum law might be applied. This is especially true because of Petitioner's status as a self-insurer under the Georgia Workers' Compensation Act. In this situation, Petitioner clearly received the fundamental fairness required by the Due Process Clause.

In summary, the significant contacts required under *Hague* were present, and the Georgia courts did not deny Petitioner due process by applying Georgia law to the Claimant's case.

CONCLUSION

The Georgia court's application of Georgia law to the case at bar in no way violated either the Full Faith and Credit or the Due Process Clauses of the Constitution. Under the facts of this case, Georgia gave Tennessee law full faith and credit as required under both the plurality opinion in *Thomas* and the *McCartin* decision. Furthermore, the Georgia employment contract and Claimant's history of employment in Georgia constituted sufficient contacts to satisfy the requirement of due process. For these reasons, Claimant respectfully request that the petition for a writ of certiorari be denied.

NEELY & PLAYER, P.C.

By: _____

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(Counsel of Record)

Attorneys for Respondent,
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March 18, 1983

Supreme Court, U.S.
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JUN 9 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROADWAY EXPRESS, INC.,

Petitioner,

v.

LAWRENCE G. WARREN,

Respondent.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF GEORGIA

BRIEF OF PETITIONER

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Counsel for Roadway Express, Inc.

June 9, 1983

THE CASILLAS PRESS, INC. – 1717 K Street N.W. – Washington, D.C. – 223-1220

QUESTIONS PRESENTED

1. Whether the Georgia courts unconstitutionally failed to give Full Faith and Credit to Tennessee law in awarding Respondent Georgia workers' compensation benefits when he had already received such benefits under Tennessee law and had irrevocably elected to proceed under that state's law.

2. Whether the Georgia courts acted unconstitutionally in awarding Georgia workers' compensation benefits to Respondent since Georgia does not have a significant contact or aggregration of contacts with the parties and the occurrence or transaction involved in this case.

DESIGNATION OF CORPORATE RELATIONSHIPS

Roadway Express, Inc., filing this its brief on writ of certiorari to the Court of Appeals of Georgia, as petitioner in this proceeding, states that:

This is its third Designation of Corporate Relationships. The Designation that was filed originally on February 14, 1983 is currently accurate.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1367

ROADWAY EXPRESS, INC.,

Petitioner,

v.

LAWRENCE G. WARREN,

Respondent.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF GEORGIA

BRIEF OF PETITIONER

OPINION BELOW

The opinion of the Court of Appeals of Georgia is reported at 163 Ga.App. 759, 295 S.E.2d 743 (1982). There is no reported opinion of the Supreme Court of Georgia, which denied petitioner's application for certiorari on November 16, 1982.

STATEMENT OF JURISDICTION

The opinion of the Georgia Court of Appeals was entered on September 16, 1982. Petitioner's motion for rehearing was denied by the Georgia Court of Appeals on

October 6, 1982. Petitioner subsequently filed its application for certiorari in the Supreme Court of Georgia, which was denied on November 16, 1982. Petitioner filed its petition for writ of certiorari in this Court on February 14, 1983, within the time allowed by law. The jurisdiction of this Court was invoked under 29 U.S.C. § 1257(3). This Court granted Petitioner's petition for a writ of certiorari to the Court of Appeals of Georgia on April 25, 1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions involved in this case are reproduced as part of Appendix B to petitioner's petition for writ of certiorari to this Court or are set forth in this brief:[1]

1. U.S. Const. art. IV, § 1.
2. U.S. Const. amend. XIV, § 1.
3. Ga. Code Ann. (Harrison) § 6-803 (1975) [now codified at Official Code of Ga. Ann. § 5-6-38 (1982)].
4. Ga. Code Ann. (Harrison) § 114-404 (1973) [now codified at Official Code of Ga. Ann. § 34-9-261 (1982)].
5. Ga. Code Ann. (Harrison) § 114-411 (1973) [now codified at Official Code of Ga. Ann. § 34-9-242 (1982)].
6. Tenn. Code Ann. (Bobbs-Merrill) § 50-902 (1977) [now codified at Tenn. Code Ann. § 50-6-102 (1983)].

[1]Petitioner incorrectly included *present* versions of some of the listed Tennessee and Georgia statutes in its Petition Appendix B. Petitioner has included the versions of these statutes in force on the date of Respondent's accident in the Appendix to this brief.

7. Tenn. Code Ann. (Bobbs-Merrill) § 50-908 (1977) [now codified at Tenn. Code Ann. § 50-6-108 (1983)].

8. Tenn. Code Ann. (Bobbs-Merrill) § 50-914 (1977) [now codified at Tenn. Code Ann. § 50-6-112 (1983)].

9. Tenn. Code Ann. (Bobbs-Merrill) § 50-917 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)].

10. Tenn. Code Ann. (Bobbs-Merrill) § 50-1005 (1977) [now codified at Tenn. Code Ann. § 50-6-205 (1983)].

11. Tenn. Code Ann. (Bobbs-Merrill) § 50-1007 (1977) [now codified at Tenn. Code Ann. § 50-6-207 (1983)].

This case draws in question the constitutionality of Ga. Code Ann. (Harrison) § 114-411 (1973) [now codified at Official Code of Ga. Ann. § 34-9-242 (1982)].

STATEMENT OF THE CASE

I. PROCEEDINGS BELOW

Lawrence G. Warren (hereinafter "Respondent"), employed by Roadway Express, Inc. (hereinafter "Petitioner"), was injured on October 20, 1978 in an on-the-job accident in Indiana.[2] Respondent was then a resident of Tennessee, working for Petitioner out of Nashville, Tennessee. (P-A-17a) Petitioner and Respondent entered into an agreement to pay and receive benefits under the

[2]Petition Appendix A, p. 17a (hereinafter referred to as "P-A" and by page); P-A-16a-23a, being the Georgia State Board of Workers' Compensation Award (hereinafter "Georgia Award").

workers' compensation laws of Tennessee on November 2, 1978, whereby the parties elected to come under the workers' compensation laws of Tennessee. (P-A-17a and 18a; J-A-8-10, 27-28; R-116) Workers' compensation benefits were paid pursuant to this agreement and election for the amounts allowed under Tennessee law from October 21, 1978 through October 12, 1979. (P-A-18a; J-A-9-10, 29; R-116)

Petitioner, while affirming application of Tennessee law, terminated Respondent's benefits in Tennessee on October 12, 1979 and filed its complaint in the Chancery Court of Davidson County, Tennessee, under applicable provisions of Tennessee law, to adjudicate subsequent cessation of Respondent's disability by virtue of medical improvement in his condition. (J-A-16, 30-33; R-116) (*See* Tenn. Code Ann. (Bobbs-Merrill) § 50-1005 (1977)) [now codified at Tenn. Code Ann. § 50-6-205 (1983), *infra*, p. 6a-7a.]

On October 15, 1979, three days after his benefits were stopped, Respondent signed a form for workers' compensation benefits in Georgia and thereafter filed his claim. (J-A-3-4) Petitioner controverted Respondent's claim, asserting, among other defenses, acceptance of the Tennessee benefits as a bar. (J-A-5-6) On August 6, 1980, following a hearing, the Georgia Board of Workers' Compensation awarded Respondent supplemental benefits to those in Tennessee. (P-A-16a-23a) The Georgia Award found that the parties had agreed and elected to come under the workers' compensation laws of Tennessee and found that the benefits paid from 1978 to 1979 were properly paid under those laws. (P-A-17a-18a) The award further allowed credit for the benefits paid under Tennessee law to Respondent. (P-A-23a) The administrative law judge nevertheless concluded that Georgia was not barred

from granting a supplemental compensation award. (P-A-20a, 22a)

Petitioner appealed this award to the Full Board of Workers' Compensation in Georgia, asserting, among other grounds, the unconstitutionality of the failure of the administrative law judge to give Full Faith and Credit to the prior award of compensation under Tennessee law in violation of U.S. Const. art. IV, § 1, and in violation of due process of law under U.S. Const. amend XIV, § 1. (J-A-52-53) No appeal from the findings of fact, conclusions of law or allowance of credit for benefits paid under Tennessee law was taken by Respondent.[3] Thereafter, the Full Board, by award dated January 8, 1981, affirmed the findings and conclusions of the administrative law judge, *de novo*. (P-A-6a) Petitioner then appealed to the Superior Court of Fulton County, Georgia, acting as an appellate court, again asserting, among other grounds, failure of the Georgia Board to give Full Faith and Credit to the prior Tennessee award and denial of due process to Petitioner. (J-A-54-55) Again, Respondent took no appeal from the award of the Full Board.

On December 1, 1981, the Superior Court of Fulton County, Georgia, through the Honorable Sam Phillips McKenzie, affirmed the Board Award. (P-A-5a) Thereafter, Petitioner filed its application for appellate review to the Supreme Court of Georgia, which that Court

[3]That Respondent has taken the detriment, as well as the benefit, of Tennessee law is further amply illustrated by the granting of summary judgment to Petitioner in Indiana litigation instituted by Petitioner to recover its subrogation rights under the Tennessee Act for payments made thereunder. *Roadway Express, Inc. v. Lawrence G. Warren*, No. H 79-490 (N.D. Ind. Feb. 9, 1983), Supplemental Brief of Petitioner in Support of Petition for Certiorari at pp. 1a-11a (hereinafter "SB" and by page number). The *res judicata* effect of the Tennessee and Georgia proceedings was evidently not considered by the Court in the Indiana litigation.

transferred to the Court of Appeals of Georgia on January 7, 1982. (P-A-4a) On January 26, 1982 the Court of Appeals of Georgia granted Roadway's application for appellate review. (P-A-3a) Following notice of appeal, enumeration of errors, and argument, the Court of Appeals of Georgia issued its opinion on September 16, 1982, reported at 163 Ga. App. 759, 295 S.E.2d 743 (1982), wherein the Court upheld the exercise of jurisdiction by the Georgia Board and entry of a supplemental award of compensation and affirmed the lower court. (P-A-8a-15a) Petitioner thereupon filed a motion for rehearing before the court, which was denied. (P-A-2a) Petitioner then applied for the writ of certiorari to the Supreme Court of Georgia, which was denied on November 16, 1982. (P-A-1a)

On February 14, 1983, Petitioner filed its petition for writ of certiorari with this Court. On April 25, 1983 this Court granted Petitioner's application for writ of certiorari to the Court of Appeals of Georgia.

II. STATEMENT OF FACTS

Respondent was first employed by Petitioner as an over the road truck driver on March 25, 1963. At that time, Respondent was working for Petitioner out of Atlanta, Georgia and continued to do so until 1967. (P-A-17a) In 1967, Respondent had an on-the-job accident in Petitioner's employ and was out of work because of the accident from 1967 to 1971. During this time, he received benefits under the workers' compensation laws of Georgia. (P-A-17a) While Respondent was disabled, Petitioner had a change of operations, cutting the number of drivers operating in Atlanta. Respondent asked for and received an assignment to Nashville, Tennessee on August 17, 1969. (P-A-17a-18a; J-A-20, 25; R-122) Respondent

returned to work for Petitioner in Nashville, Tennessee, on March 9, 1971. (R-178) Before he could be reemployed, Respondent was required to take a two-day medical examination given by Petitioner. (J-A-13) He was only guaranteed to be reemployed if he passed the physical. (J-A-24) He returned to work at a different wage and on a different driving run. (J-A-23-24) From sometime in 1972 until June 1, 1976, Respondent worked on a "peddle run" from Nashville, Tennessee to Columbia, Tennessee. (J-A-14)[4] Beginning on June 1, 1976, and continuing until the date of his accident on October 20, 1978, Respondent was on a "run" between Nashville, Tennessee and Chicago, Illinois and encompassing only the states in between. (J-A-14, 17, 48-49; R-75) While on this run, on October 20, 1978, Respondent was involved in a vehicular accident with another truck in St. John, Indiana. (J-A-15, P-A-18a)

Respondent moved to Nashville, Tennessee in 1971, when he returned to work for Petitioner, and was living in Tennessee on the date of his accident. (J-A-14, 16, 26; R-101) In September, 1979, Respondent moved to Florida. (J-A-19)

Following Respondent's accident, and after he had returned to Nashville, Tennessee, Respondent went to Petitioner's terminal and signed an agreement for payment of compensation under the workers' compensation laws of the State of Tennessee. (J-A-8-10, 18, 27-28; R-116) He knew that the form was a Tennessee form for workers' compensation benefits; he read the form and no one tricked him into signing it. (J-A-18) Further, it was stipulated by the parties that the workers' compensation benefits

[4]A peddle run is confined to a driving radius of 75 miles from the home terminal (Nashville). (J-A-51-52; R-115-116, 179).

paid were paid under the Workmen's Compensation Act of Tennessee. In fact, counsel for Respondent said, in connection with stipulating payments under the Tennessee Act: "We have an executed form and it is correct." (J-A-9) The parties also stipulated that Respondent was paid compensation under Tennessee law from October 21, 1978 through October 12, 1979 at the rate of $100.00 per week. (P-A-17a, J-A-9-10) Medical expenses were also paid. (J-A-9-10, 29; R-116) Respondent hired his counsel, Mr. Pepper, before the time that he and Petitioner had a dispute over compensation benefits. (J-A-17) Respondent and his counsel had discussed his workers' compensation claim before Petitioner terminated his benefits in Tennessee. (J-A-20)

Based upon these stated facts, the Georgia Award found that: ". . . [T]he parties herein involved entered into an agreement whereby the claimant elected to come under the Workers' Compensation Laws of Tennessee. The claimant received benefits pursuant to this agreement. . . " (P-A-18a) The Georgia Board then formulated the legal issue as being: ". . . [W]hether or not the claimant's election and actual receipt of compensation benefits under Tennessee law from October 21, 1978 through October 12, 1979 bars him from seeking a second recovery in Georgia." (P-A-19a) The administrative law judge thereupon concluded that: ". . . [C]laimant's election and receipt of compensation benefits under Tennessee law does not preclude the granting of a supplemental award. . . " (P-A-22a, Finding 4) However, the Georgia Board allowed for credit for all benefits paid under Tennessee law. (P-A-23a) Respondent has not appealed from these findings of fact.

SUMMARY OF ARGUMENT

The rights of Petitioner and Respondent under the prior Tennessee workers' compensation proceedings have been finally determined. Respondent elected to receive Tennessee workers' compensation benefits as his exclusive remedy in this case, and this irrevocable election to proceed solely under Tennessee law is *res judicata,* and therefore final and binding on Respondent. All necessary elements of Respondent's Tennessee claim and irrevocable election to proceed under Tennessee law were either stipulated by the parties in this case or found as a matter of fact in the Georgia proceedings. Respondent has never filed any cross-appeal from any of the findings in the Georgia proceedings which are adverse to him, and the findings are therefore final.

The Tennessee proceedings which have been treated by the parties and found in the Georgia Award to be final and *res judicata* of the rights of the parties under Tennessee law should be given Full Faith and Credit in this case. Under either *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430, 64 S.Ct. 208 (1943) or *Industrial Commission of Wisconsin v. McCartin,* 330 U.S. 622, 67 S.Ct. 886 (1947), the Tennessee proceedings are entitled to Full Faith and Credit. The Tennessee exclusive remedy statute, as interpreted by decisions of the Supreme Court of Tennessee, has "unmistakable language" precluding a second award of compensation where a workers' compensation claimant has elected to proceed under Tennessee law. Neither of these cases was overruled by a majority of the Court in *Thomas v. Washington Gas Light Co.,* 448 U.S. 261, 100 S.Ct. 2647 (1980), and a similar result is supported by a majority of the Justices in that case. The overwhelming interests in the parties to this proceeding are in Tennessee, and Georgia has at best only a slight interest in this case.

The Full Faith and Credit Clause of the U.S. Constitution therefore bars Georgia's supplemental award of workers' compensation benefits to Respondent.

Moreover, the Tennessee exclusive remedy statute is itself entitled to Full Faith and Credit in Georgia. Georgia's interest in this case is only casual, and there is no rational basis for allowing Georgia to make a second award of workers' compensation benefits to Respondent. Respondent exercised his workers' compensation remedy in Tennessee, and Georgia has no legitimate public policy which would be furthered by allowing it to ignore the overwhelming state interest of Tennessee in this case.

The second award of compensation entered in Georgia also denies Petitioner due process. In order for Georgia to apply its law in this case in a constitutionally permissible manner, it is necessary for Georgia to have a significant contact or significant aggregation of contacts with the parties and the transaction or occurrence involved. The only contact with Georgia in this case is the fact that fifteen years prior to the accident Petitioner and Respondent entered into a contract of employment in Georgia. Georgia's use of this tenuous contact to justify its second award of benefits to Respondent is fundamentally unfair and unjustifiably infringes upon the legitimate interest of Tennessee in having its workers' compensation laws be the exclusive remedy of parties who choose to come under its law. Georgia's choice of its law in contravention of the clearly stated public policy of Tennessee therefore violates the Due Process Clause of the U.S. Constitution.

ARGUMENT AND CITATION OF AUTHORITY

I.

THE RIGHTS OF THE PARTIES UNDER TENNESSEE LAW HAVE BEEN FINALLY DETERMINED.

Tenn. Code Ann. (Bobbs-Merrill) § 50-908 (1977) [now codified at Tenn. Code Ann. § 50-6-108 (1983)] provides that the rights and remedies of an employee subject to the workers' compensation laws of Tennessee exclude all other rights and remedies of such employee on account of personal injury or death by accident arising out of and in the course of employment. The Tennessee Supreme Court has held in unmistakable language that this exclusivity results in a workers' compensation claimant making an irrevocable election to proceed under the workers' compensation law of the state in which he first receives benefits. *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979); *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931).[5] The record in this case shows that Respondent entered into an agreement under the workers' compensation laws of Tennessee and received benefits under that state's law. Under Tennessee law, receipt of those benefits is Respondent's exclusive remedy and his election of that remedy is irrevocable and final.

A review of the material element of a claim for workers' compensation in Tennessee reveals that all of these elements have been met in this case and this determination is *res judicata*, and therefore final and binding on Respondent The first element necessary for recovery of benefits under Tennessee law is that Respondent sustained an injury by accident arising out of and in the course of his

[5]These cases are discussed completely in Part II (A) of the brief, *infra*, p. 15.

employment with Petitioner which caused either disablement or death. Tenn. Code Ann. (Bobbs-Merrill) § 50-902 (1977) [now codified at Tenn. Code Ann. § 50-6-102 (1983)]. This fact was stipulated by the parties at the initial hearing before the administrative law judge, although there was disagreement between the parties as to the length of disability sustained by Respondent. (R-48-49) For Tennessee workers' compensation benefits to be payable to Respondent, it was also necessary that Tennessee have jurisdiction over this case, since Respondent's accident occurred outside of the State of Tennessee. Tenn. Code Ann. (Bobbs-Merrill) § 50-917 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)] provides that if an employee suffers an injury outside of the state he is entitled to Tennessee benefits if either the employment was principally localized within Tennessee or the contract of hire was made in Tennessee. Although the Court of Appeals of Georgia held that, for purposes of the Georgia Workers' Compensation Act, the contract of employment between Petitioner and Respondent was made in Georgia, this issue was strongly contested by Petitioner. However, Respondent has conceded in his brief in opposition to the petition for certiorari herein that Respondent's employment was principally localized within Tennessee.[6] It has thus been admitted that Tennessee had jurisdiction over this workers' compensation claim. The final basic element of a Tennessee workers' compensation claim necessary for consideration in this case is the requirement implied by Tennessee case law that a workers' compensation claimant elect to proceed under Tennessee law as his exclusive remedy for recovery of workers' compensation benefits. *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979); *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn.

[6]Brief in Opposition to Petition for Writ of Certiorari, p. 11.

420, 43 S.W.2d 221 (1931). The Georgia administrative law judge found as a matter of fact that Petitioner and Respondent had agreed and elected to come under the workers' compensation laws of Tennessee and that benefits had been paid to Respondent from 1978 to 1979 under Tennessee law. This finding was affirmed by the Full Board of Workers' Compensation of Georgia, and no appeal or cross-appeal has been taken by the Respondent from this finding.

It is clear that all of the above necessary elements of Respondent's Tennessee claim and irrevocable election to proceed under Tennessee law have been met and that these matters are *res judicata* in this case. All of the material elements except for Respondent's election to proceed under Tennessee law were stipulated by the parties. These oral stipulations before the administrative law judge are binding on the parties. *See, e.g., Wilson v. State,* 145 Ga. App. 315, 244 S.E.2d 355 (1978). The administrative law judge found as a matter of fact that Respondent elected to receive workers' compensation benefits under Tennessee law and was paid compensation under Tennessee law from October 21, 1978 through October 12, 1979. This finding was adopted by the Full Board of Workers' Compensation of Georgia. Although Petitioner has appealed this award through the entire Georgia appellate court system, contending that this election bars Respondent from claiming Georgia workers' compensation benefits under the Full Faith and Credit and Due Process Clauses of the United States Constitution, Respondent has never filed any cross-appeal from this finding. Ga. Code Ann. (Harrison) § 6-803 (1975) [now codified at Official Code of Ga. Ann. § 5-6-38 (1982)] provides that an appellee may institute cross-appeal by filing notice thereof within 15 days after service of the appellant's notice of appeal, presenting for

adjudication all errors or rulings adversely affecting him. This procedure is available in workers' compensation cases, and the failure to cross-appeal makes this finding final. *Linder v. Alterman Foods, Inc.*, 162 Ga. App. 786, 292 S.E.2d 900 (1982); *Miller & Co. v. Gibbs*, 161 Ga. 698, 132 S.E. 626 (1926).

The effect of finality of this finding under Georgia law is demonstrated by the case of *Georgia Casualty & Surety Co. v. Randall*, 162 Ga. App. 532, 292 S.E.2d 118 (1982). In that case an insurance company had filed an action in a Georgia superior court to recover workers' compensation benefits paid during a time in which the claimant was not entitled to benefits. Claimant had been paid compensation for a period of time and the insurer had subsequently requested a hearing before an administrative law judge contending that claimant's condition had changed for the better since he had received a salary from the employer during the time he had been paid benefits. The administrative law judge determined that claimant had been overpaid compensation benefits and found that the insurer was authorized to cease compensation payments. The matter of repaying the insurer for the overpayments, provision for which is made under Official Code of Ga. Ann. § 34-9-243 (1982) [formerly Ga. Code Ann. (Harrison) § 114-415 (1973)], was not addressed in the award and no appeal was taken. The Georgia Court of Appeals held that the superior court action was barred by the doctrine of *res judicata* since the administrative law judge had not ordered repayment and the insurer did not appeal the award. Since the issue of repayment could have been litigated before the administrative law judge, *res judicata* barred any subsequent attempt to litigate this issue in light of the finality of the original award.

It is therefore evident that for the purposes of this case

the Tennessee proceedings and Respondent's election to proceed solely under Tennessee law in his workers' compensation claim are *res judicata* and final. This finality and the binding effect of Respondent's receipt of workers' compensation benefits under Tennessee law have been conceded by Respondent in this case and have been assumed in all administrative and judicial decisions in Georgia in this case. All elements of the Tennessee proceedings are final for purposes of the Full Faith and Credit Clause, and the relevant inquiry becomes whether, in light of the "irrevocable election doctrine" of Tennessee, Respondent's Georgia workers' compensation claim is barred.

II.

PETITIONER IS ENTITLED TO HAVE THE TENNESSEE PROCEEDINGS GIVEN FULL FAITH AND CREDIT IN GEORGIA

A. The Tennessee proceedings are entitled to Full Faith and Credit in Georgia.

As herein stated, the Tennessee proceedings have been treated by the parties and found in the Georgia Award to be final and *res judicata* of the rights of the parties under Tennessee law. It is the effect of the Tennessee payment and acceptance of benefits that is at dispute. As the Georgia Court of Appeals stated:

> Is this Tennessee decision entitled to full faith and credit in Georgia so as to bar recovery under this state's Workers' Compensation Act? We are not persuaded that the relevant case law, applying the Full Faith and Credit Clause, requires such a result. In our view, the more reasonable interpretation is that the Georgia Board is not precluded from applying the Georgia Workers' Compensation Act when jurisdiction has been

> properly invoked thereunder, notwithstanding an award properly made in a sister state. The United States Supreme Court is in general agreement with this position . . .

Roadway Express, Inc. v. Warren, 163 Ga. App. 759, 762-763, 295 S.E.2d 743, 746-747 (1982).

Petitioner firmly disagrees that this Court should so hold in this case.

Before examining the relevant decisions of this Court, it is necessary to examine the decisions of the State of Tennessee, the state whose law the Georgia court eschews. In *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931), the widow of an employee injured in an on-the-job accident sought benefits in Tennessee. The employer's principal office was in Tennessee, the employee was hired in Tennessee, and the employee met his death in an accident while on what was apparently a single job in the State of Ohio. The widow had begun proceedings in Ohio and had obtained an award and accepted benefits in Ohio before proceeding in Tennessee. The employer, while contesting the Ohio court's jurisdiction, refused to satisfy the Ohio award after its entry. Under a provision of Ohio law, the State of Ohio thereafter made payments to the widow. The Supreme Court of Tennessee recognized that the widow could have brought a compensation claim in Tennessee but noted that the Tennessee Act provided that its ". . . rights and remedies . . . shall exclude all other rights and remedies . . . at common law or otherwise, on account of such injury or death." *Id.* at 423-424, 43 S.W.2d at 223. The court reasoned that the employment contract incorporated this section by reference and applied it to the accident in Ohio. "Accordingly, when petitioner instituted the

proceedings in Ohio to recover compensation for her husband's death, this was a clear renunciation or disaffirmance of the contract. The obligations of the contract cannot be repudiated in one suit and benefits of that contract be claimed in a subsequent suit [citations omitted] . . . There can be no question but that the election thus made was irrevocable because petitioner has taken the benefit of the Ohio suit and defendant will doubtless take the detriment of that suit." *Id.*[7]

While it could perhaps be argued that *Tidwell* addresses itself to the converse situation of that presented in this case, it is self-apparent that the Tennessee courts would not have occasion to consider the effect of the election of Tennessee benefits in the first instance followed by an effort to seek a supplemental award from another state. However, in the case of *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979), the Supreme Court of Tennessee had occasion to give an even more clear expression of Tennessee law on this subject. In that case, the employee resided in Tennessee and the employer had offices and made its contract of employment within Tennessee. However, the employee was injured in Virginia.

[7]In a subsequent case, *Ohio v. Chattanooga Boiler & Tank Co.*, 289 U.S. 439, 53 S.Ct. 663 (1933), this Court, whose original jurisdiction was invoked by the State of Ohio, considered the further effect of the widow's election. The employer in that case sought to invoke the Full Faith and Credit Clause under the decision of *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145, 52 S.Ct. 571 (1932), which is more fully discussed, *infra*, (Part II (B), p. 28). This Court declined to allow the employer to plead the exclusiveness of the Tennessee Workmen's Compensation Act remedy in Tennessee *on the facts there presented*. This Court noted that the Supreme Court of Tennessee in *Tidwell* had held that the widow renounced her rights under Tennessee law by virtue of the Ohio proceedings, and that the Ohio proceedings thus bound the employer and the widow. For that reason, this Court did not go on to compare the Tennessee statute with the statute of Vermont relied upon in *Clapper*.

After seeking and receiving benefits under an agreement for payment of compensation under Virginia law, the employee thereafter sought benefits under Tennessee law. Recognizing that Tennessee law had extra-territorial application for injuries occurring outside the state, where the employment was localized within the state or the contract for hire was made within the state, Tenn. Code Ann. (Bobbs-Merrill) § 50-917 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)], the court discussed *Tidwell* and the principle of Tennessee law of irrevocable election.[8] In language critical to an understanding of Tennessee law, the court stated:

> Counsel for the appellant earnestly and ably has sought to persuade the Court that it should recede from *Tidwell.* We are cited to 4 *Larson, Workmen's Compensation Law,* § 85.00 and to *Restatement (Second)* of *Conflict of Laws* § 182 (1969). On the basis of these authorities we are implored to hold that successive awards may be made in different states, deducting the amount of the first award from the second. Courts of last resort in various sister states have adopted this approach.
>
> These authorities are appealing; however, we are not persuaded to sanction a course of conduct that would result in *what is essentially a single cause of action being made the subject of lawsuits in two states,* absent compelling considerations such as those enumerated in *Thomas,*

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[8]The court distinguished *Thomas v. Transport Ins. Co.,* 532 S.W.2d 263 (Tenn. 1976), which involved simple acceptance of checks under Arkansas law with no information as to the nature of the benefits being received. The instant case is equally distinguishable on its facts herein cited and the finding of irrevocable election of the Georgia Award, from which no appeal was taken.

> *supra*. We are persuaded that the *Tidwell* rule represents a fair approach in those cases wherein the injured workman has made a binding election as indicated by affirmatively seeking and accepting benefits in another state. (emphasis added)

True, 584 S.W.2d at 797-798.[9]

In *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 64 S.Ct. 208 (1943), this Court held that the Louisiana Court of Appeals erred in declining to give Full Faith and Credit under U.S. Const. art. IV, § 1 to an award in Texas adjudicating the employee's claim for compensation for an injury suffered there, and in granting a supplemental award of compensation in Louisiana. As Mr. Chief Justice Stone noted: '". . . [W]hen the employee who has recovered compensation for his injury in one state seeks a second recovery in another he may be met by the plea that full faith and credit requires that his demand, which has become *res judicata* in one state, must be recognized as such in every other . . ." *Id.* at 437, 64 S.Ct. at 213. While recognizing certain very limited exceptions to the application of the Full Faith and Credit Clause, this Court found

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[9]A potentially confusing note is injected by the last paragraph of the opinion which holds that the Full Faith and Credit Clause does not preclude the Tennessee suit, citing *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622, 67 S.Ct. 886 (1947). In this regard, it should be remembered that it was the *Virginia* award as to which the employer in *True* was seeking Full Faith and Credit, not an award of Tennessee. Virginia has been determined to be among those states which do not have the "unmistakable language" necessary under *McCartin* which would warrant a construction designed to preclude any recovery by a proceeding brought in another state. *Id.* at 627-628, 67 S.Ct. at 889. *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S.Ct. 2647 (1980). Hence, the Court in *True* was giving the same construction to the Virginia statute and decisions given by this Court in *Thomas* and properly felt that the precedent of *McCartin* did not call for imposition of the Full Faith and Credit Clause as a bar.

no such exception in the area of workmen's compensation laws. *Id.* at 438, 64 S.Ct. at 213.

> . . . The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application. [citation omitted] . . .

Id. at 439, 64 S.Ct. at 214. The fact that Louisiana had a recognized interest in awarding compensation to Louisiana employees did not override this policy.[10]

It is noteworthy that this Court in *Magnolia* did not concern itself with whether the Texas award was a "judicial proceeding" or a "record" of Texas within the meaning of the Full Faith and Credit Clause. Both are required to be given Full Faith and Credit. *Id.* at 443, 64 S.Ct. at 215. This Court thus gave credit to substance over form. In the present case, as discussed, *supra,* pp. 11-13, the parties have agreed, or the Georgia Award found, that degree of finality requisite for *res judicata.* The Georgia

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[10]In the area of interest analysis, which will be more fully discussed, *infra,* p. 25, it is worthwhile to note that Hunt was a Louisiana resident, hired in Louisiana, whose sole contact with Texas was injury there. In the present case, Warren's sole contact with the State of Georgia was being hired in Georgia some fifteen years before the accident. He subsequently voluntarily transferred to Tennessee seven years before the accident and did not enter the State of Georgia under his employment arrangement for business purposes for at least six years preceding the accident. He was a resident of Tennessee and was injured in Indiana while driving from Nashville, Tennessee to Chicago, Illinois.

Court of Appeals did not allow a collateral attack on the Tennessee proceedings as not being *res judicata* of the parties' rights under Tennessee law. The Georgia court simply chose to ignore the Tennessee proceedings other than as a credit to the Georgia supplemental award.

This Court reexamined the present issue in *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622, 67 S.Ct. 886 (1947), a decision which has been subsequently criticized by this Court[11] but which is nevertheless worthy of examination under the facts here presented. Both the employer and employee in *McCartin* resided in Illinois and the contract of employment was made there but the employee was injured in Wisconsin. He filed claims in both states and received a settlement and award under Illinois law which included a provision that the settlement did not affect his rights under Wisconsin law. When he thereafter sought compensation in Wisconsin, the employer relied upon *Magnolia*. While this Court might have chosen to rest its decision solely upon the language in the Illinois award which would have allowed the proceedings in Wisconsin, the Court instead chose to rest its decision not only on that saving exception in the Illinois award but also on an interpretation of Illinois law and its exclusivity in the workers' compensation area, which was found to only limit the right of action against the employer to bar common law or personal injury suits. This Court noted that ". . . there is nothing in the statute or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment. *Cf. Bradford Electric Light Co. v. Clapper* [remaining citation

[11] *See Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S.Ct. 2647 (1980).

omitted] . . ." *Id.* at 627-628, 67 S.Ct. at 889. The Court went on to note: ". . . [W]e should not readily interpret such a statute so as to cut off an employee's right to sue under other legislation passed for his benefit. Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction . . ." *Id.* at 628, 67 S.Ct. at 889.

That was the state of the law, in overview, at the time of this accident. Subsequent to this accident and the institution of proceedings in Georgia, this Court has rendered its decision in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S.Ct. 2647 (1980). In that case, the employee resided in the District of Columbia, his employer was principally located within the District and hired the employee there. However, the employee was injured in Virginia. He applied for and received benefits under the Virginia Workmen's Compensation Act. Thereafter, the employee sought a supplemental award in the District of Columbia. While Virginia's "exclusivity" statute is similar to that of Tennessee, there were evidently no cases in Virginia giving interpretation to the effect of this statute like those of *Tidwell* and *True*.[12] A plurality of this Court reasoned that *McCartin* has so eroded *Magnolia* that the principle of *stare decisis* would not be significantly violated by reexamining those cases. The plurality examined different state interests affected by the conflict between Virginia and the District of Columbia. These interests were characterized as follows:

> . . . Virginia has a valid interest in placing a limit on the potential liability of companies that transact business within its borders. Both jurisdic-

[12] *Thomas*, 448 U.S. at 265, n.4, and at 269, 100 S.Ct. at 2652, n. 4, and at 2654-2655.

> tions have a valid interest in the welfare of the injured employee – Virginia because the injury occured within that State, and the District because the injured party was employed and resided there. And finally, Virginia has an interest in having the integrity of its formal determinations of contested issues respected by other sovereigns.

Id. at 277, 100 S.Ct. at 2659.[13] Relying on two earlier cases, *Alaska Packers Ass'n v. Industrial Accident Commission*, 294 U.S. 532, 55 S.Ct. 518 (1935) and *Pacific Employers Insurance Co. v. Industrial Accident Commission*, 306 U.S. 493, 59 S.Ct. 629 (1939), as well as more recent cases,[14] the plurality reasoned that the principle of the Full Faith and Credit Clause does not require a state to subordinate its own compensation policies to those of another state.[15] The plurality went on to state that they "would hold" that one state has no legitimate interest in preventing another from granting a supplemental compensation award when the second state would have had the power to apply its laws in the first instance. *Id.* at 286, 100 S.Ct. at 2663.

Three members of this Court, concurring in the judgment based upon their interpretation of the Virginia statute as lacking the "unmistakable language" required by

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[13]It is noteworthy that no such interest of Georgia could be asserted in this case. Respondent was neither employed nor did he reside in Georgia at the time of his accident.

[14]*Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182 (1979); *Crider v. Zurich Insurance Co.*, 380 U.S. 39, 85 S.Ct. 769 (1965); *Carroll v. Lanza*, 349 U.S. 408, 75 S.Ct. 804 (1955).

[15]Each of the cases relied on were cases which involved holdings that the *statutes* of another state were not, under the facts, entitled to Full Faith and Credit. In this regard, see discussion of giving Full Faith and Credit to the Tennessee statute, *infra*, p. 28.

McCartin, disagreed with the plurality. In essence, the concurring members of this Court would affirm both *McCartin* and *Magnolia,* though expressing the view that *Magnolia* states the sounder doctrine. Mr. Justice White, writing the concurring opinion, states: ". . . It seems to me grossly unfair that the plaintiff, having the initial choice of forum, should be given the additional advantage of a second adjudication should his choice prove disappointing . . ." *Id.* at 289, 100 S.Ct. at 2664-2665. Finally, Mr. Justice Rehnquist, one of two dissenting Justices, noted that six members of this Court agreed that *McCartin* was analytically indefensible while the remaining three Members of the Court conceded that it " 'rest[s] on questionable foundations.' " *Id.* at 290, 100 S.Ct. at 2665. The dissenting Justices would overrule *McCartin* and affirm the application of *Magnolia* to the facts. Mr. Justice Rehnquist, in this opinion, noted that ". . . [w]hile workmen's compensation awards may be 'non-final' in the sense that they are subject to continuing supervision and modification, Virginia nevertheless has a cognizable interest in requiring persons who avail themselves of its statutory remedy to eschew other alternative remedies that might be available to them . . ." *Id.* at 293, 100 S.Ct. at 2667.

Under either *Magnolia* or *McCartin,* Petitioner is entitled to have the Tennessee proceedings accorded Full Faith and Credit in Georgia. All of the essential elements of *res judicata* or finality have been found present. And, unlike the Illinois statute, as interpreted by the Illinois courts in *McCartin,* Tennessee has in "unmistakable language" indicated its desire for exclusivity. One year before this Court's decision in *Thomas,* the Supreme Court of Tennessee in *True* rejected, for Tennessee, the very reasoning of some writers on the desirability of allowing successive

awards in two or more states.[16] The *True* court, in stating that there exists a *single* cause of action, which cannot be made the subject of lawsuits in two states, is rejecting, in the most forceful terms, the actions taken by the Georgia tribunals in this case. Thus, whether viewed under the rationale of *Magnolia* alone, or the combined rationale of *Magnolia* and *McCartin*, Georgia must give Full Faith and Credit to the Tennessee proceedings.

The Georgia Court of Appeals has itself recognized that *Alaska Packers, Pacific Employers,* and even *Thomas* are factually distinguishable from the case at bar. *Roadway Express, Inc. v. Warren,* 163 Ga. App. at 764, 295 S.E.2d at 747. The instant case presents one of the strongest cases, on its facts, ever before this Court on this issue. If an interest-weighing approach is used, as delineated by Justice Frankfurter in his dissent in *Carroll v. Lanza,* 349 U.S. at 419, 75 S.Ct. at 810, all of the ten interests he enumerates for workmen's compensation cases are on the side of Tennessee or some state other than Georgia except the highly contested issue of where the employment contract was made.[17] But interest analysis alone is insufficient

[16]Compare *Thomas,* 448 U.S. at 274, n.19, 100 S.Ct. at 2657, n.19, citing Professor Larson, with *True,* 584 S.W.2d at 797-798, wherein Professor Larson's reasoning was expressly rejected by Tennessee.

[17]"The relevant considerations have been: the place of the employment contract [Petitioner herein contended for Tennessee, Respondent for Georgia and the Georgia Court of Appeals upheld on the 'any evidence' test the Georgia Award finding of Georgia]; the residence of the parties [Respondent resided in Tennessee and afterwards moved to Florida while Petitioner's 'residence' is not established other than that it has a terminal in Nashville, Tennessee]; the place of injury [Indiana in this case]; the possibility of the workman becoming a public charge in the State seeking to award compensation, *see Alaska Packers* [not possible in this case – see argument *infra,* p. 35]; the interest of a State in securing prompt payment of medical fees to its residents [none of the medical suppliers in this case are Georgia residents]; the aspect of exclusivity of the foreign statute, *see McCartin* ["unmistakable

answer to the teaching of *Magnolia*. *Magnolia* finds that Full Faith and Credit is paramount over conflicting significant interests of the state. Even assuming, *arguendo*, that Georgia has some remote interest in Respondent, fifteen years after he entered an employment agreement with Petitioner in Georgia, seven years after he moved his residence from Georgia and six years after he ceased entering Georgia for business purposes, the Full Faith and Credit Clause still requires that Georgia yield to Tennessee under these circumstances.

To allow Georgia to do otherwise is to encourage even more those parochial instincts which have been asserted by the states in this area. If each state is free to follow, or even to ignore,[18] its rules of conflicts of law and to ignore the administrative and judicial proceedings of sister states having vastly greater interest in the subject matter, the whole purpose of the Full Faith and Credit Clause will be soon lost.

Moreover, a decision to affirm the Georgia court in this

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language" of Tennessee decisions]; the State's interest in the bodily safety and economic protection of workers within it [Warren was not working within Georgia]; the difference between a defense (which if rejected results in irremediable liability) and a cause of action (which if not allowed in one State can be pursued in another), *see Clapper* [Respondent has a remedy in Tennessee]; the amount of work to be performed in a State, *see Cardillo* [none in Georgia for six years preceding the injury date]; and the policy of determinate liability and prompt remedy underlying workmen's compensation acts [Petitioner and Respondent entered into an agreement for payment of compensation in Tennessee within two weeks of date of accident]."

[18]"Georgia's conflicts rules dictated a contrary result to that of this case. *See Wardell v. Richmond Screw Anchor Co.*, 133 Ga. App. 378, 210 S.E.2d 854 (1974); *Allen v. Smith & Medford, Inc.*, 129 Ga. App. 538, 199 S.E.2d 876 (1974); *Eldon Industries, Inc. v. Paradies & Co.*, 397 F.Supp. 535 (N.D. Ga. 1975); *Peretzman v. Borochoff*, 58 Ga. App. 838, 200 S.E. 331 (1938).

case will encourage forum-shopping. Respondent was obviously quite content to receive benefits under Tennessee law as long as Petitioner was content to pay them. But when, on the basis of a new doctor's opinion one year after the accident, Petitioner contended that Respondent was no longer disabled, Respondent, within days, sought to use the Georgia forum to his advantage. The Georgia advantages are, in fact, numerous. Aside from the additional $10.00 per week allowed in Georgia over the Tennessee benefits,[19] Georgia also provides for lifetime disability benefits as opposed to Tennessee's maximum of 400 weeks.[20] Moreover, Tennessee allows subrogation against a recovery from a third party tortfeasor, whereas Georgia has no such provision.[21] These significant differences in the law of Georgia and the law of Tennessee bespeak the reasons for Respondent's forum-shopping.

The tenuousness of Georgia's interest in this case, the weightiness of Tennessee's interest, the clarity of Tennessee's policy, and the principles of law in this Court's decisions in *Magnolia* and *McCartin* all dictate application

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[19]Compare Ga. Code Ann. (Harrison) § 114-404 (1973) [now codified at Official Code of Ga. Ann. § 34-9-261 (1982)], providing benefits in 1978 of $110.00 per week (Georgia Laws 1978, pp. 2220, 2222) to Tennessee Code Ann. (Bobbs-Merrill) § 50-1007 (1977) [now codified at Tenn. Code Ann. § 50-6-207 (1983)], which in 1978 provided benefits of $100.00 per week.

[20]Compare Ga. Code Ann. (Harrison) § 114-404 (1973) [now codified at Official Code of Ga. Ann. § 34-9-261 (1982)] to Tenn. Code Ann. (Bobbs-Merrill) § 50-1005 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)].

[21]Compare Tennessee Code Ann. (Bobbs-Merrill) § 50-914 (1977) [now codified at Tenn. Code Ann. § 50-6-112 (1983)] to former Ga. Code Ann. § 114-403 (repealed by Georgia Laws 1972, p.3). Because of the Indiana litigation, and Petitioner's subrogation rights established therein, substantial monies are at issue on this point. See SB-8a (lien against future benefits due under Tennessee law).

of Full Faith and Credit to the Tennessee proceedings herein.

B. Georgia is required to give Full Faith and Credit to the Tennessee statute.

Petitioner has asserted, and maintains, that the Tennessee proceedings have the requisite finality for *res judicata* treatment by this Court. However, Petitioner further asserts that the Tennessee statute, as interpreted by the courts of that state, is itself entitled to Full Faith and Credit in Georgia. Tenn. Code Ann. (Bobbs-Merrill) § 50-908 (1977) [now codified at Tenn. Code Ann. § 50-6-108 (1983)] provides that: "The rights and remedies herein granted to an employee subject to the Workmen's Compensation Law . . . shall exclude all other rights and remedies of such employee . . . at common law or otherwise, on account of such injury . . ." As interpreted by *True* and *Tidwell,* when a worker takes action to elect benefits based upon his "single cause of action", he cannot thereafter maintain a second action.

This statute, as interpreted by the highest court of the State of Tennessee, is not unique among the states.[22] In this Court's original confrontation with this issue, in *Bradford Electric Light Co. v. Clapper,* 286 U.S. 145, 52 S.Ct. 571 (1932), the Court considered a Vermont resident employed by a Vermont employer who was killed in New Hampshire while temporarily there. His representative thereafter sought to proceed under New Hampshire law which permitted a negligence action. Vermont law barred the action. This Court held that the Vermont law, though conflicting with the law of New Hampshire, was entitled

[22] *See Thomas,* 448 U.S. at 275, n. 21, 100 S.Ct. at 2657, n. 21 (Nevada statute).

to Full Faith and Credit under U.S. Const. art. IV, § 1, because the Vermont statute is a "public act" within the meaning of the Full Faith and Credit Clause. This Court used the same rationale used in *Tidwell* and followed in *True*. "Workmen's compensation acts are treated, almost universally, as creating a statutory relation between the parties – not, like employer's liability acts, as substituting a statutory tort for a common-law tort. [citations omitted]" *Clapper*, 286 U.S. at 157-158, 52 S.Ct. at 575. Noting that the Vermont statute was intended to give expeditious relief independent of proof of fault and also determinate liability, this Court found that its effectiveness would be gravely impaired by New Hampshire's failure to give Full Faith and Credit. *Id.* at 159, 52 S.Ct. at 575-576. While recognizing that the Full Faith and Credit Clause does not require enforcement of every right conferred by a statute of another state, and noting ". . . room for some play of conflicting policies . . .", this Court found no basis for the lower court's conclusion that to deny recovery would be obnoxious to the public policy of New Hampshire. *Id.* at 160-161, 52 S.Ct. at 576. As noted by Mr. Justice Brandeis:

> The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears, he had no dependent there. It is difficult to see how the state's interest would be subserved, under such circumstances, by burdening its courts with this litigation.

Id. at 162, 52 S.Ct. at 577.

In *Alaska Packers Association v. Industrial Accident Commission*, 294 U.S. 532, 55 S.Ct. 518 (1935), this Court was presented with a somewhat different situation. There, a non-resident alien entered into a contract of employment

in California to work in Alaska during the salmon canning season. After his return from Alaska to California, he sought workmen's compensation benefits in California for a summer injury sustained in Alaska. The employer asserted the exclusivity of the Alaska statute. This Court, noting that the California statute does not purport to have any extraterritorial effect, "in the sense that it undertakes to impose a rule for foreign tribunals . . .", distinguished *Clapper. Id.* at 540, 55 S.Ct. at 520. Fearing that denial of a remedy in California would leave the employee remediless, the Court found a legitimate public interest in California. In analyzing the Full Faith and Credit problem, the Court properly noted that: ". . . A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced by the courts of the other, but cannot be in its own . . ." *Id.* at 547, 55 S.Ct. at 523. (Of course, the corollary question presented in the instant case might be stated somewhat differently: Whether or not, when a conflict arises in a workers' compensation case, the statute of a sister state may ever be required to be enforced in the forum state under the Full Faith and Credit Clause?) The *Alaska Packers* court went on to note that:

> . . . [N]ot every statute of another state will override a conflicting statute of the forum by virtue of the full faith and credit clause; that the statute of a state may sometimes override the conflicting statute of another, both at home and abroad; and, again that the two conflicting statutes may each prevail over the other at home, although given no extraterritorial effect in the state of the other . . .

Id. at 548, 55 S.Ct. at 524. The Court said that that rationale was fully recognized in *Clapper* in the appraisal of the governmental interests of the two states, Vermont and New Hampshire. The Court simply questioned the existence of a rational basis for denying the courts of California the right to apply the laws of their own state under the facts.

Alaska Packers is readily distinguishable from the instant case. It is obvious that the work which the employee in *Alaska Packers* was to perform in Alaska was the exact work which the parties contracted for in California and contemplated would be done that summer. In the present case, while the facts were hotly disputed, the most that can be said is that there was "some evidence" to support the notion that the employment contract was entered into in Georgia in 1963.[23] However, the *job* which Respondent was performing pursuant to his contract of employment was clearly unrelated to Georgia and had been for many years. His work did not require him to enter Georgia or to reside in Georgia, and he did not do so. In fact, he evidenced no interest in Georgia whatsoever until nearly one year after his accident, long after he had engaged counsel, and then only because Petitioner disputed his right to *continued* benefits in Tennessee after paying him disability payments for nearly one year. Unlike the nonresident alien from Mexico in *Alaska Packers,* Respondent here not only had the resources to file a claim in Tennessee, he did so. His claim was honored and accepted. It is, in fact, the acceptance of his claim in Tennessee that

[23] *Roadway Express, Inc. v. Warren*, 163 Ga. App. at 760-761, 295 S.E.2d at 745 (1982) ("Our review of the record convinces us that the contentions of both parties have merit. There is evidence supporting both positions.")

gives rise to the conflict. Had he chosen to apply first in Georgia, Tennessee would have held that he had disaffirmed his right to Tennessee benefits and elected to accept Georgia benefits. *Tidwell, True.* If, as this Court was suggesting in *Alaska Packers,* a flexible approach is required, and Full Faith and Credit is *sometimes* to be allowed to the statute of a sister state when a conflict arises, no more compelling facts could be presented than in this case.

The plurality in *Thomas* suggested that: ". . . [F]or all practical purposes respondent and its insurer would have had to measure their potential liability exposure by the more generous of the two workmen's compensation schemes in any event . . ." *Thomas,* 448 U.S. at 280, 100 S.Ct. at 2660. But by what reasonable interpretation could Petitioner have predicted the result here reached? In today's mobile society, employees move frequently. Over a period of 20 or 30 years, an employee's duties may change. The lower court here suggested that there was evidence to support a theory of novation of the contract when Respondent moved to Tennessee because of his change of duties.[24] If this is so, the Georgia Board (or the Tennessee court, for that matter) could have found a "new" contract in Tennessee in 1971. If *Alaska Packers* is slavishly interpreted to mean that any state having an old employment contract (or novation of contract) has a sufficient interest to overcome all other states, then no employer can predict its liability. Must the employer, in assessing its exposure, consider not only the laws of the state where the employee was originally hired, and the state where he is working when injured, and the state of injury, but also every state to which the employee is transferred during a long career? Is not some greater nexus required than that Petitioner

[24] *Roadway Express, Inc. v. Warren,* 163 Ga. App. at 760-761, 295 S.E.2d at 745 (1982).

hired Respondent in Georgia for different duties, in a different location, residing in a different place, working at different wages, and at a time fifteen years distant from the date of the accident? What is Georgia's interest under these circumstances? Is not the "obnoxiousness" the tenuous *Georgia* interest?

The later cases decided by this Court all involve quite distinguishable facts. *Pacific Employers Insurance Co. v. Industrial Accident Comm'n,* 306 U.S. 493, 59 S.Ct. 629 (1939), again involving California, concerned an employee who was injured in California and received medical and hospital attention there. Focusing on the obligation placed on the employer by the California statute to furnish such care, this Court declined to apply the Full Faith and Credit Clause to a Massachusetts statute because the injury occurred within the territorial limits of California. Recognizing California's interest in allowing compensation for employees injured within its borders, and recognizing that *Clapper* provided for an exception when the forum state found provisions of the other state's statute obnoxious, this Court permitted California to eschew the Massachusetts exclusivity rule and apply its own law. It is noteworthy, however, that this Court reaffirmed the right of *this Court* to determine for itself how far the Full Faith and Credit Clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state. *Pacific Employers,* 306 U.S. at 502, 59 S.Ct. at 633. In other words, Georgia is not the final arbiter of whether or not its laws can properly supplant those of Tennessee. This Court is the final arbiter of that subject.

In *Carroll v. Lanza,* 349 U.S. 408, 75 S.Ct. 804 (1955), the employee and employer were residents of Missouri, the contract was made in Missouri for work to be done in

Arkansas, and it was there that the injury occurred. The employee accepted benefits under the Missouri Compensation Act and then sued the general contractor in Arkansas for common law damages. This Court noted that *Magnolia* was to be distinguished because, under Missouri law, the payments had started automatically and there had been no adjudication. Relying on *Pacific Employers'* teaching that the place of the injury can override the compensation act of the home state, and based upon policy considerations such as those raised in *Pacific Employers* (problems of medical care and of possible dependency), this Court allowed the common law suit in Arkansas.

In *Crider v. Zurich Ins. Co.*, 380 U.S. 39, 85 S.Ct. 769 (1965), the employee was a resident of Alabama and employed in Alabama by a Georgia company. He was injured in Alabama, and thereupon sought to enforce the Georgia Workmen's Compensation Act in Alabama. The lower court dismissed the action based upon its determination that Georgia's Act was one which was to be exclusively administered by the Georgia Compensation Board. *Id.* at 40, 85 S.Ct. at 769. In analyzing *Clapper, Alaska Packers* and *Pacific Employers,* this Court in *Crider* indicates that certain interest factors allow a variance from the strict enforcement of the Full Faith and Credit Clause to the statute of one state in the forum of another. This Court notes the *Alaska Packers* exception as being the *state of residence* of the injured employee (evidently the *Alaska Packers* employee, though a non-resident alien, was deemed to be residing in California). The state of injury under *Pacific Employers* was another recognized state interest. Yet, in all of the interest analysis, no interest comparable to the rather meager one asserted here is stated by the *Crider* Court to be sufficient to overcome the Full Faith and Credit Clause.

Finally, in *Nevada v. Hall,* 440 U.S. 410, 99 S.Ct. 1182 (1979), this Court once more considered the line of authority beginning with *Clapper.* In a tort action involving California residents injured in California by a vehicle operated by an employee of the State of Nevada, which, by statute, limited to $25,000.00 any tort award against it, the California courts nonetheless upheld an award of $1,150,000.00. Against this, the State of Nevada asserted the Full Faith and Credit Clause, among other contentions. In reviewing the decisional law, this Court again recognized that in certain limited situations, the courts of one state must apply the statutory law of another state, citing *Clapper. Id.* at 421-422, 99 S.Ct. at 1188-1189. It is only when the *legitimate* public policy of one state is violated by applying the other state's law that the Full Faith and Credit Clause is not required to be applied. The same interests which authorized California in the *Pacific Employers* case to provide for "the bodily safety and economic protection of employees injured within it," also allowed protection of those interests in *Nevada v. Hall,* a tort action. *Id.* at 424, 99 S.Ct. at 1190.

It has been suggested that these later cases "buried whatever was left of *Clapper* after *Pacific Employers Ins. Co. v. Industrial Accident Comm'n . . .*" *Thomas,* 448 U.S. at 272, n. 18, 100 S.Ct. at 2656, n. 18. Petitioner agrees that where a significant *present* interest is vested in the forum state, this may be true. But no public policy interest can be articulated which would give Georgia contact with this accident. Georgia will not be left to provide for this employee.[25] In fact, medical or hospital services for

[25]As a non-resident of Georgia before and after the accident, he would be ineligible for State funded unemployment benefits, "welfare" benefits or free medical care. *See* Official Code of Ga. Ann. §§ 34-8-1 and 40 (1982) [formerly Ga. Code Ann. (Harrison)

Respondent were provided in Indiana and Tennessee. Nor are any of the other contacts described by Justice Frankfurter in his dissent in *Carroll v. Lanza*, 349 U.S. at 419, 75 S.Ct. at 810, applicable. After Respondent voluntarily left Georgia in 1971, that state had no interest in his employment relationship with Petitioner. Tennessee's overwhelming state interests have already been delineated. Accordingly, exercising the authority of final arbiter of the Full Faith and Credit Clause, this Court should find that Georgia must give Full Faith and Credit to the Tennessee statute under the facts of this case.

III.

THE GEORGIA AWARD DENIES PETITIONER DUE PROCESS.

Respondent respectfully submits that under the facts of this case, Georgia's exercise of jurisdiction over this workers' compensation claim violates the Due Process Clause of the United States Constitution (U.S. Const. amend. XIV, § 1). The application of due process to a choice of law question has recently been enunciated by this Court in the decision of *Allstate Insurance Co. v. Hague*, 449 U.S. 302, 101 S.Ct. 633 (1981), as follows: "[F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its laws is neither arbitrary nor fundamentally unfair." *Id.* at 312-13, 101 S.Ct. at 640. The *Hague* decision and prior decisions of this

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§§ 54-601 and 657 (1974)]; Official Code of Ga. Ann. §§ 49-4-3, 4, 80, 81, 100 and 140 (1982) [formely Ga. Code Ann. (Harrison) §§ 99-2903, 2904, 2001, 2002, 901 and 4601 (1981)]; and Official Code of Ga. Ann. §§ 49-9-1 and 9 [formerly Ga. Code Ann. (Harrison) §§ 32-2302 and 2309 (1980)].

Court indicate that Georgia's lack of interest in this case precludes Georgia from constitutionally exercising jurisdiction over this workers' compensation claim under Ga. Code Ann. (Harrison) § 114-411 (1973) [now codified at Official Code of Ga. Ann. § 34-9-242 (1982)].

This Court considered whether the exercise of jurisdiction in a workers' compensation proceeding violated due process in *Alaska Packers.* The Court was convinced that, under the circumstances of that case, fully discussed, *supra,* pp. 29-32, due process was not violated by California's exercise of jurisdiction. The Court restricted its holding to the particular facts of the case, stating as follows:

> It is unnecessary to consider what effect should be given to the California statute if the parties were domiciled in Alaska or were their relationship to California such as to give it a lesser interest in protecting the employee by securing for him an adequate and readily available remedy.

294 U.S. at 543, 55 S.Ct. at 522.[26]

The decisions of *Home Insurance Co. v. Dick,* 281 U.S. 397, 50 S.Ct. 338 (1930) and *John Hancock Mutual Life Insurance Co. v. Yates,* 299 U.S. 178, 57 S.Ct. 129 (1936), whose continued validity were recognized by this Court in *Hague,* held that where the selection of forum law rests exclusively on one nonsignificant forum contact, application of its law is unconstitutional. In *Dick,* the only contact with the forum was that the plaintiff was a citizen of the

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[26]So far as Petitioner can ascertain, *Alaska Packers* is the last case decided by this Court in the area of workers' compensation which specifically considered a due process challenge.

forum state. Plaintiff was physically present and acting outside of the forum state and all other contacts were elsewhere than in the forum state. In *Yates*, the only contact with the forum state was the post-occurrence change of residence of the plaintiff to the forum state. The *Hague* Court found sufficient contacts for application of forum law in that case. The contacts were cited in the plurality opinion – plaintiff's decedent was employed and working daily in the forum state at the time of the occurrence in suit, defendant was at all times present and doing business in the forum state, and plaintiff was a resident of the forum state when suit was filed. These contacts are far more signficant than those in the instant case.

The only contact between the State of Georgia and the instant workers' compensation claim is the fact that fifteen years prior to the accident Petitioner and Respondent entered into a contract of employment in Georgia, under which Respondent worked for four years before his 1967 injury. Georgia has no other contact with this litigation. At all times pertinent to the accident involved in this case, Respondent was a resident of Tennessee. From the date of his reemployment with Petitioner in 1971, Respondent worked out of the Nashville, Tennessee terminal, and he had not even driven into Georgia for over six years prior to the accident. Respondent's accident occurred in Indiana while he was on his run to Chicago from Nashville, a run which he had exclusively driven for over two years prior to his accident. He initially chose to receive workers' compensation benefits under the laws of his state of residence, Tennessee, and admitted accepting benefits under the workers' compensation laws of Tennessee. He has not been transferred back to Georgia, nor has he moved to Georgia. He now lives in Florida. It has not even been established that Petitioner has a specific place of business

in Georgia.[27] In light of Respondent's reemployment by Petitioner in Tennessee in 1971 after a four-year lapse of work and the fact that he resided in Tennessee and operated out of that state after that date, the mere fact that he lived in Georgia and worked for Petitioner from 1963 until 1967 in Georgia does not constitute a sufficient contact with Georgia to allow application of the Georgia Workers' Compensation Act.

It is clear under the facts of this case that the application of Georgia law to allow Respondent a second award of workers' compensation benefits is fundamentally unfair, thus resulting in a denial of due process. The application of Georgia law unjustifiably infringes upon the legitimate interest of the State of Tennessee in having its workers' compensation laws be the exclusive remedy of parties who choose to come under its law. Under the circumstances of this case, Petitioner could not reasonably have anticipated that it would be subject to an award of workers' compensation benefits in Georgia. Georgia has absolutely no interest in Respondent and cannot constitutionally ignore the legitimate public policy of Tennessee as announced in the decisions setting forth Tennessee's "irrevocable election doctrine". The Georgia Court of Appeals has sought to apply Georgia public policy to a case in which it has no interest whatsoever. The Georgia Court of Appeals' choice of Georgia law in contravention of the clearly stated public policy of Tennessee was therefore unconstitutional.

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[27] The Georgia Award "inferred" that Petitioner had a place of business from its stipulation as a qualified self-insurer in Georgia (P-A-19a), a questionable conclusion in view of the absence of any Georgia requirement on a self-insurer that it have a place of business in the state. *See* Ga. Code Ann. (Harrison) §§ 114-602 and 604 (1973) [now codified at Official Code of Ga. Ann. §§ 34-9-121 and 14 (1982)].

Pursuant to the aforecited precedent from this Court, the Georgia Court of Appeals should have held that Tennessee law and not Georgia law governed Respondent's workers' compensation case. Under the Due Process Clause, Tennessee law and its "irrevocable election doctrine" bar Respondent's claim for benefits under Georgia law, requiring that the decision of the Georgia Court of Appeals be reversed.

CONCLUSION

Accordingly, the decision of the Court of Appeals of Georgia should be reversed because Georgia's exercise of jurisdiction over this workers' compensation claim in contravention of the "irrevocable election doctrine" of Tennessee law violated the Full Faith and Credit and Due Process Clauses of the U.S. Constitution.

Respectfully submitted,

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APPENDIX

STATUTORY PROVISIONS INVOLVED

Ga. Code Ann. (Harrison) § 6-803 (1975) [now codified at Official Code of Ga. Ann. § 5-6-38 (1982)]

(a) A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of . . . In civil cases, the appellee may institute cross-appeal by filing notice thereof within 15 days from service of the notice of appeal by appellant, and the appellee may present for adjudication on the cross-appeal all errors or rulings adversely affecting him, and in no case shall the appellee be required to institute an independent appeal on his own right, although the appellee may at his option file an independent appeal. The notice of cross-appeal shall set forth the title and docket number of the case, the name of appellee and the name and address of his attorney, a designation of any portions of the record or transcript designated for omission by appellant and which the appellee desires included, and shall state that the appellee takes a cross-appeal. In all cases where the notice of appeal did not specify that a transcript of evidence and proceedings was to be transmitted as a part of the record on appeal, the notice of cross-appeal shall state whether such transcript is to be filed for inclusion in the record on appeal. A copy of the notice of cross-appeal shall be served on other parties of record in the manner hereinafter prescribed.

(b) Where cross-appeal is filed, only one record and, where specified, only one transcript of evidence and proceedings need be prepared and transmitted to the appellate court, but the cross-appellant may, at his election, require that such a separate record (and transcript, if required) be

transmitted. Where cross-appeal is filed and only one record (and transcript where required) is sent up, the court shall by order provide for the division of costs therefor between the parties, if they are unable to do so by agreement.

Ga. Code Ann. (Harrison) § 114-411 (1973) [now codified at Official Code of Ga. Ann. § 34-9-242 (1982)]

Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this state or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title.

Ga. Code Ann. (Harrison) § 114-404 (1973) [now codified at Official Code of Ga. Ann. § 34-9-261 (1982)]

While the disability to work resulting from an injury is total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's weekly wage, but not more than $110 per week nor less than $25 per week, except that when the weekly wage is below $25 the employer shall pay a weekly benefit equal to the average weekly wage.

Tenn. Code Ann. (Bobbs-Merrill) § 50-902 (1977) [now codified at Tenn. Code Ann. § 50-6-102 (1983)]

In chapters 9 through 12 of this title, unless the context otherwise requires:

* * * * *

(d) "Injury" and "personal injury" shall mean an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment which cause either disablement or death of the employee.

Tenn. Code Ann. (Bobbs-Merrill) § 50-908 (1977) [now codified at Tenn. Code Ann. § 50-6-108 (1983)]

The rights and remedies herein granted to an employee subject to the Workmen's Compensation Law on account of personal injury or death by accident, including a minor whether lawfully or unlawfully employed, shall exclude all other rights and remedies of such employee, his personal representative, dependents, or next of kin, at common law or otherwise, on account of such injury or death.

Tenn. Code Ann. (Bobbs-Merrill) § 50-914 (1977) [now codified at Tenn. Code Ann. § 50-6-112 (1983)]

When the injury or death for which compensation is payable under the Workmen's Compensation Law was caused under circumstances creating a legal liability against some person other than the employer to pay damages, the injured workman, or his dependents, shall have the right to take compensation under such law, and such injured workman, or those to whom his right of action survives at law, may pursue his or their remedy by proper action in a court of competent jurisdiction against

such other person. In the event of a recovery from such other person by the workman, or those to whom his right of action survives, by judgment, settlement, or otherwise, the attorney representing such injured workman, or those to whom his right of action survives, and effecting said recovery, shall be entitled to a reasonable fee for his services, and said attorney shall have a first lien therefor against said recovery; provided, however, that if the employer has engaged other counsel to represent the employer in effecting recovery against such other person, then a court of competent jurisdiction shall, upon application, apportion said reasonable fee between the attorney for the workman and the attorney for the employer, in proportion to the services rendered.

In event of such recovery against such third person by the workman, or by those to whom his right of action survives, by judgment, settlement, or otherwise, and the employer's maximum liability for workmen's compensation under chapters 9 through 12 of this title has been fully or partially paid and discharged, the employer shall have a subrogation lien therefor against such recovery and the employer may intervene in any action to protect and enforce such lien. Provided, further, that in event said net recovery by the workman, or by those to whom his right of action survives, exceeds the amount paid by the employer, and the employer has not, at said time, paid and discharged his full maximum liability for workmen's compensation under chapters 9 through 12 of this title, the employer shall be entitled to a credit on his future liability, as it accrues, to the extent the net recovery collected exceeds the amount paid by the employer. Provided further, however, that in event the workman, or those to whom his right of action survives, effects a recovery, and collection thereof, from such other person, by judgment, settlement,

or otherwise, without intervention by the employer, the employer shall, nevertheless, be entitled to a credit on his future liability for workmen's compensation, as it accrues under chapters 9 through 12 of this title, to the extent of said net recovery.

Such action against such other person by the injured workman, or those to whom his right of action survives, must be instituted in all cases within one (1) year from the date of injury. Failure on the part of the injured workman, or those to whom his right of action survives, to bring such action within said one (1) year period shall operate as an assignment to the employer of any cause of action in tort which the workman, or those to whom his right of action survives, may have against any other person for such injury or death, and such employer may enforce same in his own name or in the name of the workman, or those to whom his right of action survives, for such employer's benefit, as such employer's interest may appear, and the employer shall have six (6) months after such assignment within which to commence such suit.

Tenn. Code Ann. (Bobbs-Merrill) § 50-917 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)]

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this law had such injury occurred within this state, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by the law, provided that at the time of such injury: (a) the employment was principally localized within this state or (b) the contract of hire was made in this state.

Tenn. Code Ann. (Bobbs-Merrill) § 50-1005 (1977) [now codified at Tenn. Code Ann. § 50-6-205 (1983)]

No compensation shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, except the benefits provided for in § 50-1004, but if disability extends beyond that period, compensation shall commence with the eighth day after the injury. In the event, however, the disability from the injury exists for a period as much as fourteen (14) days, then compensation shall be allowed beginning with the first day after the injury.

The total amount of compensation payable under this chapter shall not exceed forty thousand dollars ($40,000) in any case, exclusive of medical, hospital and funeral benefits. Compensation shall be paid promptly, the first payment shall be due and payable within fifteen (15) days after the employer has knowledge of any disability or death and thereafter compensation shall be paid to the employee or his dependents semimonthly. Any employer or his insurance carrier who fails to pay compensation as herein provided shall suffer a penalty of six per cent (6%) on any unpaid instalments.

Upon making the first payment of benefits, and upon stopping or changing such benefits for any cause other than final settlement, or upon denying a claim after proper investigation, the employer's insurance carrier or the employer, if self-insured, shall immediately notify the director, on a form prescribed by him, that the payment of income benefits has begun or has been stopped or changed. Failure to file such notice shall be a misdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50).

If payments have been made without an award, and the employer subsequently elects to controvert his liability, notice of controversy shall be filed with the director within fifteen (15) days of the due date of the first omitted payment. Failure to file such notice shall be a misdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50). In such cases the prior payment of the compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the employee be considered a binding determination of his rights.

Tenn. Code Ann. (Bobbs-Merrill) § 50-1007 (1977) [now codified at Tenn. Code Ann. § 50-6-207 (1983)]

The following is the schedule of compensation to be allowed employees under the provisions of the Workmen's Compensation Law:

(a) Temporary Total Disability. For injury producing temporary total disability, sixty-six and two thirds per cent (66 2/3%) of the average weekly wages as defined in this chapter, subject to a maximum compensation of one hundred dollars ($100.00) per week and a minimum of fifteen dollars ($15.00) per week; provided that if the employee's average weekly wages are fifteen dollars ($15.00) or more per week he shall receive not less than fifteen dollars ($15.00) per week; and provided further, that if his average weekly wages are less than fifteen dollars ($15.00) per week he shall receive the full amount of his average weekly wages, but in no event shall the compensation paid be less than fifteen dollars ($15.00) per week. Where a

fractional week of temporary total disability is involved the compensation for each day shall be one seventh (1/7) of the amount due for a full week.

* * * * *

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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ROADWAY EXPRESS, INC.,
Petitioner,

v.

LAWRENCE G. WARREN,
Respondent.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF GEORGIA

SUPPLEMENTAL BRIEF OF PETITIONER

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QUESTIONS PRESENTED

Pursuant to request of the Court, Petitioner is filing this supplemental brief on the following questions:

1. Did the original compensation agreement between Petitioner and Respondent receive judicial approval in accordance with Tenn. Code Ann. (Bobbs-Merrill) §50-1006 (1977) [now codified at Tenn. Code Ann. §50-6-206 (1983)]?

2. Has Petitioner secured any final judgment against Respondent from any Tennesee court?

3. Is the mere acceptance of compensation pursuant to an unapproved agreement filed with the Tennessee Department of Labor sufficient to render the agreement binding on the parties in Tennessee for purposes of application of the Full Faith and Credit Clause?

DESIGNATION OF CORPORATE RELATIONSHIPS

Roadway Express, Inc., filing this supplemental brief on writ of certiorari to the Court of Appeals of Georgia, as Petitioner in this proceeding, states that:

This is its fourth designation of corporate relationships. The designation that was filed originally on February 14, 1983 is currently accurate.

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IN THE

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ROADWAY EXPRESS, INC.,
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v.

LAWRENCE G. WARREN,
Respondent.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF GEORGIA

SUPPLEMENTAL BRIEF OF PETITIONER

SUMMARY OF ARGUMENT

The original compensation agreement between Petitioner and Respondent has not received judicial approval under the Tennessee statute providing that settlements be approved by the court. Additionally, Petitioner has not secured any final judgment against Respondent in Tennessee. However, Respondent's irrevocable election to receive benefits under Tennessee law is binding for purposes of application of the Full Faith and Credit and Due Process Clauses of the United States Constitution.

Prior to the date of Respondent's accident, Tennessee law changed from payment pursuant to judicially approved agreements to a direct payment system. The Tennessee statute providing for direct payments makes the fact of payments by the employer and acceptance of such payments by the employee binding upon the parties. This gives Respondent's election to receive benefits under Tennessee law the same finality as it would have under a judicially approved agreement.

The standards for determining the binding effect of an election set forth in Tennessee case law show that Respondent did make an irrevocable election to proceed solely under that State's law. Respondent took affirmative action to recover compensation benefits under the law of the State of Tennessee. He received such benefits for almost one year. He admitted knowledge that the form he signed was a Tennessee form for workers' compensation benefits, that he read the form and that no one tricked him into signing it.

The Tennessee proceedings have been treated by the parties and found in the Georgia award to be final and *res judicata* of the rights of the parties under Tennessee law. Respondent has never filed any cross-appeal from the finding of the Georgia administrative law judge that he had agreed and elected to come under the workers' compensation laws of Tennessee. Respondent has never contended that he did not take affirmative action to seek a recovery under Tennessee law or that he did not make a knowing election to accept benefits under Tennessee law.

Moreover, the supplemental award of benefits to Respondent under Georgia law violates the Due Process Clause of the United States Constitution and the Full Faith and Credit Clause as applied to the Tennessee

statute. For constitutional purposes the contract of employment under which Respondent was working when his accident occurred was a Tennessee contract and not a Georgia contract. There is no significant contact with Georgia in this case. Accordingly, Georgia's exercise of jurisdiction over this workers' compensation claim violates the Due Process Clause of the United States Constitution.

Regardless of the lack of any judicial approval of the agreement between Petitioner and Respondent or any judgment from any Tennessee court, Georgia failed to give full faith and credit to the Tennessee exclusive remedy statute as interpreted by the Tennessee courts. Because Georgia lacks any significant interest in this proceeding, it should be required to give full faith and credit to Tennessee law and its doctrine of irrevocable election.

ARGUMENT AND CITATION OF AUTHORITY

I.

RESPONDENT'S ACCEPTANCE OF BENEFITS PURSUANT TO THE UNAPPROVED AGREEMENT FILED WITH THE TENNESSEE DEPARTMENT OF LABOR WAS SUFFICIENT UNDER THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE TO RENDER IT BINDING ON THE PARTIES UNDER THE FULL FAITH AND CREDIT AND DUE PROCESS CLAUSES OF THE UNITED STATES CONSTITUTION

The original compensation agreement between Petitioner and Respondent as contained in the record has not received judicial approval under Tenn. Code Ann. (Bobbs-Merrill) §50-1006 (1977) [now codified at Tenn. Code Ann. §50-6-206 (1983)]. (J-A-27-29). Additionally, Petitioner has not secured any final judgment against Respondent from any Tennessee court. However, under

relevant provisions of Tennessee law in effect on the date of Respondent's accident, it was not necessary for any judicial approval of the agreement or judgment to be obtained in order to render Respondent's irrevocable election to receive benefits under Tennessee law binding for purposes of application of the Full Faith and Credit and Due Process Clauses of the United States Constitution (U.S. Const. art. IV, §1; U.S. Const. amend. XIV, §1).

Effective July 1, 1978, prior to Respondent's accident, the procedure for payment of compensation under Tennessee law was changed to a direct payment system with the amending of Tenn. Code Ann. (Bobbs-Merrill) §50-1005 (1977) [now codified at Tenn. Code Ann. §50-6-205 (1983)], which provides in pertinent part as follows:

> (c) Upon making the first payment of benefits, and upon stopping or changing such benefits for any cause other than final settlement, or upon denying a claim after proper investigation, the employer's insurance carrier or the employer, if self-insured, shall immediately notify the director, on a form prescribed by him, that the payment of income benefits has begun or has been stopped or changed. Failure to file such notice shall be a misdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50.00).
>
> (d) If payments have been made without an award, and the employer subsequently elects to controvert his liability, notice of controversy shall be filed with the director within fifteen (15) days of the due date of the first omitted payment. Failure to file such notice shall be a misdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50.00). In such cases the prior payment of compensation shall not be considered a binding determination

> of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the employee be considered a binding determination of his rights.

The policies behind the change in Tennessee law from payment pursuant to a judicially approved agreement to direct payment are quite evident. The direct payment system facilitates prompt payment of benefits to injured workers by simplifying the payment procedure. There is no unnecessary judicial or administrative intervention in the payment process as long as the parties agree that the employee has sustained an accident compensable under the workers' compensation laws. With the absence of judicial intervention, the statute makes it clear that the fact of payment and receipt is accorded the same finality as if there had been judicial approval of an agreement for the payment of compensation. The statute provides that the fact of prior payment of compensation by the employer and acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to *future* compensation payments. The statute does not state that the fact of payment by the employer and acceptance of compensation by the employee has no effect on the *prior* payments of compensation. It is clearly implied in the statute that the fact of prior payment and the acceptance of compensation by the employee does constitute a binding determination as to the prior compensation payments. Accordingly, in the instant case, Respondent's election to receive benefits under Tennessee law has the same finality as it would have under a judicially approved agreement.

The Tennessee Supreme Court considered the standards for determining whether an employee made a binding election to receive workers' compensation benefits under one state's law, irrespective of any final judgment or award, in the case of *Thomas v. Transport Insurance Company,* 532 S.W.2d 263 (Tenn. 1976). In that case the employee had an accident at the employer's place of business in Memphis, Tennessee. He had been paid benefits under Arkansas law, apparently without any award or approved agreement, and the employer and insurer were contending that he was precluded from seeking benefits under Tennessee law under the holding of *Tidwell v. Chattanooga Boiler & Tank Co.,* 163 Tenn. 420, 43 S. W.2d 221 (1931). In considering the propriety of the trial court's grant of summary judgment in favor of the employer and insurer, the Tennessee Supreme Court set forth the considerations for nessee Supreme Court set forth the considerations for determining whether or not an employee has made a binding election to accept benefits under one state's law as follows:

> [I]f the employee has taken any affirmative action to seek a recovery under the law of that state, or has voluntarily, deliberately and with full knowledge of his options, accepted benefits under Arkansas law, he may well be precluded by this election and may not be entitled to proceed in Tennessee. *See Tidwell v. Chattanooga Boiler & Tank Company,* 163 Tenn. 420, 423 S.W.2d 221 (1931). On the other hand, if the employee, while seriously injured and disabled, was simply sent checks by a workmen's compensation carrier, with no information as to the nature of the benefits being received, he may not be so precluded. . . Certainly the fact that the employee did receive benefits without question for over one year before taking any legal action is a circumstance against him. . . .

532 S.W.2d at 267. In accord is the decision of the Tennessee Court of Appeals in *Hale v. Commercial Union Assurance Companies,* 637 S.W.2d 865 (Tenn. 1982).

It is clear that under the facts and circumstances of the instant case Respondent did make a binding election to receive workers' compensation benefits under Tennessee law in light of the criteria set forth in *Thomas v. Transport Insurance Company,* 532 S.W.2d 263 (Tenn. 1976). Unlike the employees in *Thomas* and *Hale,* Respondent returned to Tennessee after his accident in Indiana and went to Petitioner's terminal and signed an agreement for payment of compensation under the workers' compensation law of the State of Tennessee. (J-A-8-10, 18, 27-28; R-116) He admitted knowledge that the form was a Tennessee form for workers' compensation benefits, that he read the form and that no one tricked him into signing it. (J-A-18) It was stipulated by the parties that the workers' compensation benefits paid were paid under the Workmen's Compensation Act of Tennessee. In connection with this stipulation, Respondent's counsel stated: "We have an executed form and it is correct." (J-A-9) Respondent's counsel was hired before the time that he and Petitioner had a dispute over his Tennessee claim, and Respondent and his counsel had discussed his workers' compensation claim before Petitioner terminated his benefits in Tennessee. (J-A-17, 20) Moreover, Respondent accepted benefits under Tennessee law for almost one year before filing any claim in Georgia. (J-A-3-4, 30-47)

Accordingly, there is no question but that Respondent made a binding election to accept benefits under Tennessee law. He took affirmative action to receive these benefits by entering into the agreement for receipt of compensation under the law of the State of Tennessee. He was

paid compensation under Tennessee law from October 21, 1978 through October 12, 1979. To allow Respondent, after making this binding election, to seek a second award of benefits under Georgia law will only encourage the forum-shopping which the Full Faith and Credit Clause was designed to prevent. Respondent was content to receive benefits under Tennessee law as long as Petitioner was paying them. It was only after Petitioner contended Respondent was no longer disabled, one year after benefits had been commenced, that Respondent sought refuge in the Georgia forum. Respondent obviously cannot contend that neither he nor his counsel was aware of the facts and circumstances showing his election of the Tennessee forum to adjudicate his workers' compensation claim. Respondent has a remedy. He is free to contend in the Tennessee court system that he is still disabled and seek recommencement of benefits under Tennessee law. Instead of pursuing this readily available remedy, Respondent decided to forum-shop and filed another claim in Georgia. His binding election to receive benefits under Tennessee law precludes this. Respondent's election to receive benefits, coupled with the certified copies of the Tennessee proceedings which are part of the record, are "public records" of the State of Tennessee entitled to full faith and credit in Georgia.[1]

[1]U.S. Const. art. IV, §1 provides: "Full faith and credit shall be given in each state to the public acts, *records*, and judicial proceedings of every other state. . . ." (emphasis added)

Moreover, the Tennessee proceedings have been treated by the parties and found in the Georgia award to be final and *res judicata* of the rights of the parties under Tennessee law. Therefore, the fact that the original compensation agreement did not receive judicial approval and that Petitioner has not secured any final judgment against Respondent from any Tennessee court is irrelevant.

The Georgia administrative law judge found as a matter of fact that Petitioner and Respondent had agreed and elected to come under the workers' compensation laws of Tennessee and that benefits had been paid to Respondent under Tennessee law from October 21, 1978 through October 12, 1979. This finding was adopted by the Full Board of Workers' Compensation of Georgia. Petitioner has appealed this award through the entire Georgia court system, but Respondent has never filed any cross-appeal from this finding. Moreover, Respondent has never contended that he did not take affirmative action to seek a recovery under Tennessee law or that he did not make a knowing election to accept benefits under Tennessee law. In the absence of any cross-appeal from this ruling adverse to Respondent, it is clear that the Tennessee proceedings and Respondent's election to proceed solely under Tennessee law in his workers' compensation law are *res judicata* and final under Georgia law. Ga. Code Ann. (Harrison) §6-803 (1975) [now codified at Official Code of Ga. Ann. § 5-6-38 (1982)]; *Linder v. Alterman Foods, Inc.*, 162 Ga. App. 786, 292 S.E.2d 900 (1982); *Miller & Company v. Gibbs*, 161 Ga. 698, 132 S.E. 626 (1926). That Respondent has made a binding election to receive benefits under Tennessee law has also been recognized by the Federal District Court for the Northern District of Indiana in the case of *Roadway Express, Inc. v. Lawrence G. Warren*, No. H 79-490 (N.D.Ind. Feb. 9, 1983), printed

in the Supplemental Brief in Support of Petition for Certiorari at pp. 1a-11a.

Additionally, these facts show that the supplemental award of benefits to Respondent under Georgia law was unconstitutional under (1) the Due Process Clause of the United States Constitution and (2) under the Full Faith and Credit Clause as applied to the Tennessee *statute.*

Respondent has contended that the contract under which he was working when injured in Indiana was still the original contract entered into in Georgia in 1963. While the Georgia Court of Appeals did affirm the Board's finding of a Georgia employment contract, this finding only applies to the issue of whether or not Respondent was working under a Georgia contract for purposes of application of the Georgia Workers' Compensation Act. Ga. Code Ann. (Harrison) §114-411 (1973) [now codified at Official Code of Ga. Ann. §34-9-261 (1982)]. The Georgia Court of Appeals never addressed the issue of whether it was a Georgia contract or a Tennessee contract for constitutional purposes of application of the Due Process and Full Faith and Credit Clauses.

This Court was recently presented with a case which exemplifies the impropriety of allowing Georgia to make a supplemental award of benefits under the Due Process Clause. In the case of *McCluney v. Jos. Schlitz Brewing Company,* 454 U.S. 1071, 102 S.Ct. 624 (1981), the Court affirmed without opinion the judgment of the Eighth Circuit Court of Appeals, reported at 649 F.2d 578 (8th Cir. 1981). The facts in *McCluney* are analogous to the instant case. In 1955 McCluney was a vice president for a brewing company in Kansas City, Missouri. Schlitz acquired the company in 1956 and hired McCluney as the industrial re-

lations manager for its Kansas City plant. He was subsequently promoted to plant manager. In 1970 Schlitz offered him the position of plant manager at its Winston-Salem, North Carolina plant. McCluney accepted this position and moved to North Carolina where he worked for Schlitz for nearly five years. In 1975 McCluney accepted another promotion to vice president of plant operations at corporate headquarters in Milwaukee, Wisconsin. He then sought the transfer of his secretary from Winston-Salem to Milwaukee. The company refused to transfer her for management policy reasons. McCluney and the executive vice president of Schlitz had a confrontation over this which resulted in his resignation being demanded. After McCluney left the employ of Schlitz he requested a service letter from Schlitz under a Missouri service letter statute. Schlitz denied him the service letter and McCluney moved to Missouri and brought suit in a Missouri state court, alleging among other matters that Schlitz violated the Missouri service letter statute. After removal to federal court, the jury at trial found that Schlitz had violated the Missouri service letter statute. The Eighth Circuit Court of Appeals reversed, holding that there were not sufficient contacts for the application of Missouri law. The court held that the contract under which McCluney was working when his employment with Schlitz was terminated was the contract for his promotion to vice president of plant operations in Milwaukee, Wisconsin. The only contact he had with Missouri relevant in point of time to the matter at suit was his post-termination change of residence. The Eighth Circuit specifically rejected McCluney's argument that his employment contract originally entered into in Missouri in 1956 made his rights fixed and immutable. The court held that with each job change to another location his previous employment contract was discharged for due

process purposes. The simple fact that he was originally hired in Missouri was not controlling.

The *McCluney* decision adequately demonstrates that Respondent was not working under a Georgia employment contract when injured in Indiana in 1978. The only contact Georgia has with this litigation is the fact that the earlier employment contract between Petitioner and Respondent was entered into in the State of Georgia in 1963. This contact is removed by the fact that, for constitutional purposes, Respondent was working for Petitioner under a different employment contract when injured in 1978. All of the other contacts in this case are outside of Georgia. At the time of the accident Respondent was a resident of Tennessee. From the date of his reemployment with Petitioner in 1971, Respondent worked out of the Nashville, Tennessee terminal and had not even driven to Georgia for over six years prior to the accident. The accident occurred in Indiana while Respondent was on his run from Nashville to Chicago, a run he had exclusively driven for over two years prior to the accident. He has not moved to Georgia since the accident or been transferred back to Georgia. He now lives in Florida. The lack of any significant contact with Georgia in this case shows that Georgia's exercise of jurisdiction over Respondent's workers' compensation claim violates the Due Process Clause of the United States Constitution. *Allstate Insurance Company v. Hague,* 449 U.S. 302, 101 S.Ct. 633 (1981); *Home Insurance Company v. Dick,* 281 U.S. 397, 50 S.Ct. 338 (1930); *John Hancock Mutual Life Insurance Company v. Yates,* 299 U.S. 178, 57 S.Ct. 129 (1936).

Finally, the lack of any judicial approval of the agreement between Petitioner and Respondent or any judgment from any Tennessee court does not alter the fact that

Georgia failed to give full faith and credit to the Tennessee statute. The Tennessee exclusive remedy statute, as interpreted by the Tennessee courts in *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931) and *True v. Amerail Corporation*, 584 S.W.2d 794 (Tenn. 1979), provides that when a worker takes action to elect benefits under the law of one state he cannot thereafter maintain a second action for recovery of benefits in another state. The lack of any significant interest of the State of Georgia in this proceeding shows that Georgia should be required to give full faith and credit to Tennessee law and its doctrine of irrevocable election. *See Bradford Electric Light Company v. Clapper*, 286 U.S. 145, 52 S.Ct. 571 (1932) and the discussion of full faith and credit to the Tennessee statute set forth in the Brief of Petitioner at pp. 28-36.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the lack of judicial approval of the compensation agreement between Petitioner and Respondent and the lack of any final Tennessee judgment does not affect the fact that Respondent's election to proceed under Tennessee law in his workers' compensation claim is final and binding on the parties for purposes of application of the Full Faith and Credit and Due Process Clauses of the United States Constitution. The decision of the Georgia Court of Appeals should be reversed, because Georgia cannot constitutionally exercise jurisdiction over this workers' compensation claim in contravention of the "irrevocable election doctrine" of Tennessee law.

Respectfully submitted,

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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

ROADWAY EXPRESS, INC.,
Petitioner,

V.

LAWRENCE G. WARREN,
Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF GEORGIA

BRIEF OF RESPONDENT

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July 11, 1983

QUESTIONS PRESENTED

1. Whether the Georgia State Board of Workers' Compensation gave constitutionally required full faith and credit to Tennessee law in awarding Respondent supplemental workers' compensation benefits under Georgia law after Respondent previously received workers' compensation benefits under Tennessee law.
2. Whether Georgia had sufficient contact with Respondent's employment by Petitioner for the Georgia State Board of Workers' Compensation to satisfy the requirements of due process in awarding Respondent supplemental workers' compensation benefits under Georgia law.

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IN THE

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OCTOBER TERM 1982

ROADWAY EXPRESS, INC.,
Petitioner,

V.

LAWRENCE G. WARREN,
Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF GEORGIA

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

I.

PROCEEDINGS BELOW

On October 20, 1978, Lawrence G. Warren (hereinafter referred to as "Respondent") was injured in an accident in Indiana while driving a truck for Roadway Express, Inc. (hereinafter referred to as "Petitioner"). (P-A-17a) He received workers' compensation benefits in Tennessee until October 12, 1979. (P-A-18a) Respondent then filed a claim for benefits under the Georgia Workers' Compensation Act. (J-A-3-4) After a hearing, the Administrative Law Judge issued an award on August 6, 1980, and found that Georgia's State Board of Workers' Compensation had jurisdiction over the claim and found further that Respondent had been disabled continuously

from the date of the accident; the award directed the Petitioner to pay Respondent weekly disability benefits and medical benefits under Georgia law and allowed Petitioner an appropriate credit for all amounts previously paid pursuant to Tennessee law. (P-A-16a-23a).

Petitioner appealed this award to the Chairman and two Directors of the State Board of Workers' Compensation who affirmed the original award on January 8, 1981. (J-A-52-53) Petitioner then appealed to the Superior Court of Fulton County, Georgia which affirmed the decision of the State Board of Workers' Compensation in an Order dated December 1, 1981. (J-A-54-55; P-A-5a).

On December 31, 1981, Petitioner filed its Application for Appellate Review in the Supreme Court of Georgia. In an Order dated January 7, 1982, the Supreme Court of Georgia transferred this Application to the Court of Appeals of Georgia. (P-A-4a) The Court of Appeals granted Petitioner's Application for Appellate Review in an Order dated January 26, 1982. (P-A-3a) Pursuant to this Order, Petitioner filed its Notice of Appeal to the Court of Appeals on January 29, 1982.

On September 16, 1982, the Court of Appeals of Georgia affirmed the previous awards and orders in an opinion entitled *Roadway Express, Inc. v. Warren*, 163 Ga. App. 759, 295 S.E.2d 743 (1982). (P-A-8a-15a) Petitioner's Motion for Rehearing was denied on October 7, 1982; its Application for Certiorari to the Supreme Court of Georgia was denied on November 16, 1982. (P-A-1a) This Court then granted certiorari.

II.

STATEMENT OF FACTS

Respondent filled out a written application for employ-

ment at Petitioner's office in DeKalb County, Georgia in March 1963, and was hired at that time as an over-the-road truck driver operating out of Atlanta, Georgia. (J-A-25) He drove to and through various states in the eastern part of the United States until he was injured in 1967. (J-A-10-11) Respondent drew workers' compensation benefits from Petitioner from 1967 through 1971. (J-A-11; R-59)

In 1969, during this four year period of disability when Respondent was not actively working for Petitioner, Petitioner changed its method of operation from two drivers per truck to one. (J-11; R-60) Prior to instituting this change of operations, Petitioner had 343 truck drivers operating out of Atlanta, Georgia and Respondent was number 320 on the seniority list. He was offered a choice of jobs at the time of this change of operations *if* his seniority would permit him to be accepted at such alternate job locations. If Respondent had made choices which were cut off by the seniority system, he would have been placed in a lay-off status. (J-A-11-12; R-63-64) Accordingly, because Respondent was worried that he might be too low in seniority in Atlanta whenever he might be able to return to work, and was concerned that he might not be on the payroll at that time, he listed Nashville, Tennessee as his first choice. (R-86) Then, on August 16, 1969, Petitioner executed an "Employment Status Form" which mentioned nothing about "reemployment" but placed the words "change of operations" after the words "justification . . . for transfer." (J-A-25; R-122-124)[1]

Respondent remained in Atlanta until 1971 when his disability from his 1967 accident ended. (J-A-26; J-A-50)

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[1] The printer of the Joint Appendix failed to include all relevant portions of this form; the entire form is located at R-122-124.

Petitioner refers to this return to work exclusively as "reemployment"; such terminology ignores the facts of the return to work as well as Petitioner's own "Employment Status Form" of March 10, 1971. That form makes reference to a "return to work from extended sick leave." It gives the seniority date as March 23, 1963. Furthermore, Petitioner checked the block labeled "reinstatement" and not the blocks labeled "new hire" or "rehire." (J-A-50-51; R-178) [2]

When Petitioner returned to work at the Nashville terminal in 1971, his initial truck driving was from Nashville to Atlanta, Georgia. (J-A-13) Then, for four years, his primary route was from Nashville to another city in Tennessee. (J-A-14) Claimant sustained the subject injury in October 1978 in Indiana on his regular run from Nashville to Chicago. (J-A-15; P-A-18a)

Soon after the accident, Respondent signed workers' compensation forms providing for payment of benefits under Tennessee law. The circumstances surrounding the signing of these forms are described in the following testimony of Respondent:

> A. I was required to sign a form before they gave me a workmans' compensation check.
>
> * * *
>
> Q. And you signed that to get benefits under the Tennessee Act; is that correct?
>
> A. I signed it for benefits under workmans' compensation. I wasn't aware of Tennessee, Georgia or any other—

(J-A-8-10; R-116).

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[2] *See* note 1, *supra;* the relevant page of this form is located at R-178.

Petitioner unilaterally suspended benefits on October 12, 1979. (J-A-30-33) Following the suspension of benefits,[3] Respondent initiated the Georgia workers' compensation claim which is the subject of the case at bar. At the hearing before the Georgia Administrative Law Judge, Petitioner stipulated that it was subject to the Georgia Workers' Compensation Act and was a qualified self-insurer under the Georgia Workers' Compensation Act. (P-A-162-172) In addition, Petitioner's only witness at that hearing was its supervisor of workers' compensation, State of Georgia; this witness had been stationed in Atlanta from 1963 until the date of the hearing. (R-110-111)

SUMMARY OF ARGUMENT

The exercise of jurisdiction by Georgia's State Board of Workers' Compensation over Respondent's workers' compensation claim did not violate the Full Faith and Credit Clause of the Constitution. The plurality in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) held that, if a state has the power to issue an award "in the first instance," full faith and credit does not preclude that state from issuing a supplemental award. Under this "due process" standard, neither Tennessee's exclusive remedy statute nor its alleged "proceedings" could bar Georgia's supplemental award. The essential differences between the various state workers' compensation schemes and other adversary proceedings compel this result.

The concurring opinion in *Thomas* followed *Industrial Comm'n of Wisconsin v. McCartin*, 330 U.S. 622 (1947)

[3] There never has been a Tennessee adjudication that Respondent's disability ended; to the contrary, the Georgia award found that he had been disabled continuously from the date of the accident, October 20, 1978, through the date of the hearing, March 11, 1980. (P-A-22a)

which held that only "unmistakable language" of a state's laws or judicial opinions barring supplemental awards in other states gives rise to a full faith and credit defense to such supplemental awards. Neither Tennessee's statutes nor its judicial opinions contain such "unmistakable language." Accordingly, regardless of which of these two full faith and credit analyses is used, Georgia gave full faith and credit both to Tennessee's laws and its proceedings.

The Due Process Clause of the Constitution does not prohibit Georgia's State Board of Workers' Compensation from exercising jurisdiction over Respondent's claim. Petitioner and Respondent entered into their employment contract in Georgia; Respondent then worked in Georgia for several years; Petitioner has conducted business in Georgia and has been a self-insurer for workers' compensation there at all relevant times. This Georgia contract, Petitioner's continued presence in Georgia and its familiarity with the Georgia's Workers' Compensation Act are sufficient contacts to satisfy the due process requirements of fundamental fairness and predictability.

ARGUMENT AND CITATION OF AUTHORITY

Relying upon the Georgia Workers' Compensation Act's section dealing with out-of-state accidents,[4] the Georgia State Board of Workers' Compensation and its courts have awarded the Respondent supplemental workers' compensation benefits and have given the Petitioner

[4] O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411 (1933)] permits compensation for extraterritorial accidents if there was a Georgia contract of employment and if either the employer's place of business or the employee's residence is in Georgia. This statute is reproduced on p. 2a of Brief of Petitioner.

credit for all sums previously paid. Neither the proceedings in Tennessee nor that state's statutes require the use of the Full Faith and Credit Clause to bar Georgia's exercise of its jurisdiction over Respondent's claim against Petitioner. In addition, Georgia has significant contacts with Petitioner, Respondent and their employment relationship; these contacts satisfy the requirement of affording Petitioner due process of law.

I.

THE FULL FAITH AND CREDIT CLAUSE DOES NOT BAR A SUPPLEMENTAL WORKERS' COMPENSATION AWARD IN GEORGIA AFTER PAYMENT OF BENEFITS UNDER THE TENNESSEE ACT

This Court's latest case dealing with the application of the Full Faith and Credit Clause of the United States Constitution [5] to supplemental workers' compensation awards does not afford a majority analysis of the issues at bar; nevertheless, whether one chooses to follow the reasoning of the plurality in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) or to utilize the rationale of the three concurring Justices, Georgia has given full faith and credit to Tennessee's proceedings and statutes.[6]

A. Neither the Tennessee Proceedings Nor the Tennessee Statute Can Prevent Recovery of Supplemental Benefits Under the Georgia Workers' Compensation Act.

---

[5] U.S. Const. Art. IV, § 1.

[6] Petitioner offers separate arguments concerning full faith and credit as applied to judicial proceedings on the one hand and to statutes on the other hand. As argued herein, this distinction should not apply in the area of workers' compensation law.

The plurality opinion in *Thomas* is unequivocal:

> We therefore would hold that a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award when the second State would have had the power to apply its workmen's compensation law in the first instance. The Full Faith and Credit Clause should not be construed to prevent successive workers' compensation awards.

448 U.S. at 286. Under this holding, whether one discusses the effects of the Tennessee proceedings or the Tennessee statute, the Full Faith and Credit Clause did not bar the Georgia State Board of Workers' Compensation from issuing a supplemental award in favor of Respondent. Only a lack of the power to apply its Workers' Compensation Act "in the first instance" could have precluded Georgia from issuing that award. Thus, the sole question is whether Georgia had the power to apply its own act. Respondent strongly contends that it did.

The *only* contract of employment between Petitioner and Respondent was entered into in Georgia. Respondent lived and worked in Georgia from the time of that contract until Petitioner's changes in operations forced Respondent to choose to transfer to Tennessee. He continued to drive to Georgia for a period of time. Even after he ceased driving his truck in Georgia, Petitioner continued its major operations in that state. At the time of the workers' compensation hearing in the case at bar, Petitioner was self-insured for workers' compensation in Georgia and its manager of workers' compensation for Georgia operations testified at the hearing. As discussed *infra*,[7] these facts are sufficient to vest Georgia with the

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[7] Section II, pp. 18-22, *infra*.

power to apply its Workers' Compensation Act to Respondent's 1978 accident.

To Respondent, it appears that this "fresh examination of the full faith and credit issue" by the *Thomas* plurality sets forth a threshold interest analysis, *i.e.*, a traditional due process analysis. Such an approach is consistent with the practical effect of this Court's treatment of both workers' compensation "exclusive remedy" statutes since *Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532 (1935) and workers' compensation proceedings since *Industrial Comm'n of Wisconsin v. McCartin*, 330 U.S. 622 (1947). The interest analyses which have resulted in holdings that exclusive remedy statutes, in and of themselves, do not bar proceedings in other states were not criticized in either the concurring or dissenting opinions in *Thomas*.[5] Nevertheless, Respondent must recognize the existence of criticism of both *McCartin* and the plurality's analysis insofar as they deal with prior workers' compensation awards or judgments; however, Respondent asserts that the effects of *McCartin* and the plurality's analysis are consistent with the nature of worker's compensation proceedings.

In *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), five Justices held that full faith and credit barred a supplemental Louisiana award because of the prior issuance

[5] *Alaska Packers* (contract of hire in California; employer, job and accident in Alaska; California compensation allowed); *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493 (1939) (Massachusetts employee and employer; accident in California; California compensation allowed); *Carroll v. Lanza*, 349 U.S. 408 (1955) (Missouri employee, employer and contract of hire; work and accident in Arkansas; Arkansas tort action allowed). These cases have severely limited and perhaps "buried" *Bradford Electric Co. v. Clapper*, 286 U.S. 145 (1932) (Vermont employer, employee and contract of hire; death in New Hampshire; Vermont statute bars suit in New Hampshire).

of a Texas award. Respondent will not recite here all of the arguments against that result. Those arguments have been urged strongly by the *Thomas* plurality, the dissenting opinions of Mr. Justice Douglas and Mr. Justice Black in *Magnolia*, and in numerous articles following on the heels of *Magnolia*. In summary, the criticisms of applying the bar of full faith and credit to supplemental worker's compensation awards have focused on the disparate positions of employees and employers and the nature of worker's compensation proceedings.[9] The different resources of Larry Warren and Roadway Express, Inc. are obvious but may or may not be proper considerations in this analysis; however, Respondent strongly urges that the very nature of worker's compensation proceedings distinguishes them from the type of proceedings to which full faith and credit should apply. In the ordinary case, a court or other quasi-judicial body will apply the forum's choice of law rules after the parties have had a chance to argue their positions.[10] The situation in the case at bar could not be more different.

Respondent was home in Tennessee and had not yet received any worker's compensation benefits.

> . . . and they withheld the checks until — they wouldn't bring it to my house, they wouldn't mail it. I had to get out of bed and have my son drive me down to the terminal, and he went up and got

[9] *See* Cheatham, *Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. v. Hunt*, 44 Colum. L. Rev. 330, 343-346 (1944); Wolkin, *Workmens' Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern?*, 92 U. Pa. L. Rev. 401, 405-411 (1944); and other commentaries noted in *Thomas*, 448 U.S. at 269 n.11.

[10] *See* Reese and Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 Colum. L. Rev. 153, 176-177 (1949); Respondent believes that this article presents an excellent structural analysis of the issue of giving full faith and credit to judgments.

> it [the subject agreement] and brought it downstairs and signed it and returned it.
>
> * * *
>
> I signed it for benefits under workmen's compensation. I wasn't aware of Tennessee, Georgia, or any other—

(J-A-18) This is the entire "proceeding" to which Petitioner urges this Court to give full faith and credit! Even if Respondent could have had a hearing in Tennessee (assuming he knew that he had a right to one), and even if he had requested Georgia benefits, the Tennessee court would not have entertained that request.[11]

Petitioner offers no argument against the rationale of the *Thomas* plurality. Petitioner merely argues that Georgia is ignoring the administrative and judicial proceedings of a sister state allegedly having a greater interest to the subject matter. Georgia has done no such thing! The Georgia award gives Petitioner credit for payments made under Tennessee law. The Tennessee "proceedings," if they can be so designated, contain no findings or conclusions ignored by the Georgia award. So long as Georgia meets a threshold level of interest, honors factual findings, and credits payments made, Tennessee has no interest in prohibiting Georgia from issuing a supplemental award and the Full Faith and Credit Clause has not been violated.

B. Neither the Tennessee Statute Nor Tennessee's Case Law Contain Unmistakable Language Required to Invoke the Full Faith and Credit Clause.

The main thrust of Petitioner's argument is that Respondent made an irrevocable election to proceed under

[11] *Ray v. Aetna Casualty & Surety Co.*, 517 S.W.2d 194 (Tenn. 1974); *Davis v. Swift & Co.*, 133 S.W.2d 483 (Tenn. 1939).

the Tennessee Workers' Compensation Act. Assuming *arguendo* that Tennessee has an irrevocable election doctrine and that Petitioner's receipt of Tennessee benefits fits within that doctrine, the principles set forth in *Industrial Comm'n of Wisconsin v. McCartin*, *supra*, permit the issuance of Georgia's supplemental award to Respondent.

In *McCartin*, this Court dealt with an Illinois statute, the relevant parts of which read as follows:

> No common law or statutory right to recover damages for injury or death sustained by an employe while engaged in the line of his duty as such employe, other than the compensation herein provided, shall be available to any employe who is covered by the provisions of this Act . . . .

330 U.S. at 627. This Court then found that neither this statute nor the decisions interpreting it "indicate that it is completely exclusive." This Court continued:

> And in light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted, [citations omitted] we should not readily interpret such a statute so as to cut off an employee's rights to sue under other legislation passed for his benefit. Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction.

Id. at 628.

In *Thomas*, Virginia's "exclusive remedy" statute stated that the rights and remedies granted to an employee pursuant to that statute "shall exclude all other rights and remedies of such employee . . . at common law or otherwise on account of such injury, loss of service or death." 448 U.S. at 265 n.4. Three concurring Justices found that this language was not "unmistakable" concerning the

extraterritorial effect of the statute and applied *McCartin* to support the supplemental award to the employee. Both the plurality and the dissent in *Thomas* implicitly recognized that *McCartin* was technically applicable in light of the language of the Virginia act.

Tennessee's exclusive remedy statute reads as follows:

> The rights and remedies herein granted to an employee subject to the Workmen's Compensation Law on account of personal injury or death by accident . . . shall exclude all other rights and remedies of such employee, his personal representative, dependents, or next of kin, at common law or otherwise, on account of such injury or death.

TENN. CODE ANN. § 50-908 (1977) [now codified at TENN. CODE ANN. § 50-6-108 (1983)]. Clearly, this statute does not have the "unmistakable language" required under *McCartin*.

Contrary to Petitioner's assertions, Tennessee case law does not have the required language for at least two reasons. First, in *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979) and *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931) the Tennessee Supreme Court was dealing with situations where the employee had received benefits in another state and had then applied for benefits in Tennessee. Thus, no unmistakable statement concerning the extraterritorial effect of Tennessee law was made. Petitioner stresses the fact that these cases could not have expressed an opinion on the extraterritorial effect. Respondent fully agrees, but asserts that this fact is immaterial. It is presumptuous to assume that, if the Tennessee Supreme Court somehow had been presented with the question of the extraterritorial effect of its law, it would have instructed the courts of Georgia or any other state that they could not

apply their own laws. Only a direct statement concerning extraterritorial effect should be considered to meet the "unmistakable language" requirement of *McCartin*.

Nevertheless, even if one or more members of this Court consider the language of the Tennessee statute as interpreted by the Tennessee Supreme Court to contain "unmistakable language," an examination of the relevant Tennessee cases shows an analysis based *solely* upon contracts of employment entered into in Tennessee. It is apparent from the *Tidwell* decision that the contract of employment was entered into in Tennessee. The employer's place of business was in Chattanooga, Tennessee and "[h]is contract with defendant contemplated that he would be sent out of the state when occasion required on jobs like this." 43 S.W.2d at 222. The Tennessee Supreme Court used a strict contract analysis, incorporating the provisions of the Tennessee Workers' Compensation Act into the employment contract. The court noted that "[b]y force of Section 19 the contract of employment covered this accident, which occurred in the state of Ohio." Section 19 of Tennessee's Compensation Act at that time provided coverage under Tennessee law for extraterritorial accidents only "if the contract of employment was made in this State, unless otherwise expressly provided by said contract." *Id.* at 222-223.

This employment contract rationale in *Tidwell*, followed in subsequent Tennessee cases,[12] demonstrates that

[12] In *True*, the contract of employment was made in Washington County, Tennessee, 584 S.W.2d at 795. In *Hale v. Commercial Union Assurance Co.*, 637 S.W.2d 865 (Tenn. 1982), another case dealing with Tennessee's alleged irrevocable election doctrine, the contract of employment was entered into in Tennessee. In *Thomas v. Transport Insurance Co.*, 532 S.W.2d 263 (Tenn. 1976), another case dealing with this subject, it is not stated in which state the employment contract was executed. Nevertheless, that case acknowledged *Tid-*

Tennessee's concern with supplemental workers' compensation awards is grounded upon that state's interpretation of "renunciation or disaffirmance" of a *Tennessee contract*. 43 S.W.2d at 223. Thus, if Tennessee has a true irrevocable election doctrine and if Tennessee has expressed that doctrine in "unmistakable language," that doctrine and the "unmistakable language" is limited to situations where the contract of employment was entered into in Tennessee. In the case at bar, the employment contract was entered into in the state of Georgia and, accordingly, Tennessee's alleged irrevocable election doctrine is plainly not applicable.[13]

Furthermore, if one assumes that Tennessee's cases contain the "unmistakable language," that language includes the requirement that the employee "has taken affirmative action to seek a recovery under the laws of [Tennessee], or has voluntarily, deliberately and with full knowledge of his options, accepted benefits under Tennessee law." *Thomas v. Transport Insurance Co.*, 532 S.W.2d 203 (Tenn. 1976). In *True v. Amerail Corp., supra*, the employee signed an agreement to accept Virginia benefits and an award approving that agreement was issued. The Tennessee Supreme Court found a binding election because "we cannot presume from a silent record that plaintiff did not have full knowledge of all his

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well as the source of the "irrevocable election doctrine" and it must be assumed that it was a Tennessee contract.

[13] Petitioner persists in belittling the finding of Georgia's State Board of Workers' Compensation that there was only one contract of employment and that such contract was made in Georgia. Brief of Petitioner, p. 31 n.23 and accompanying text. Petitioner continues to ignore its own forms showing a "transfer," "reinstatement," and "return to work from extended sick leave" in 1971 as opposed to "new hire" or "rehire." *See* text accompanying nn.1 and 2 *supra*.

options." 584 S.W.2d at 797. Admittedly, the Georgia administrative law judge found that Respondent "entered into an agreement whereby [he] elected to come under the Workers' Compensation Laws of Tennessee" (P-A-18a). However, this was not a finding that he had "full knowledge of his options," and, accordingly, this case could not fit within Tennessee's allegedly "unmistakable language."

Obviously, the discussion contained in this part of this Brief relies at least in part on the continued viability of *McCartin*. Petitioner, by completely ignoring *McCartin* in the section of its brief dealing with the giving of full faith and credit to statutes, presumes that case's demise. Despite this Court's criticism of *McCartin*, seven Justices in *Thomas* either expanded on the result of that case or recognized its continued viability. Whether or not the plurality's threshold analysis is desirable, it recognizes the state of the law following *McCartin*. Because of the nature of workers' compensation proceedings and the language of apparently all but one of the state exclusive remedy statutes, *Magnolia* was ignored continually and it was virtually impossible to prevent supplemental awards.[14] The three concurring Justices in *Thomas* recognized this and held that *McCartin* was controlling "since the Virginia Workman's Compensation Act lacks the 'unambiguous language' which *McCartin* requires . . . ." 448 U.S. at 289-290.

In order for the Petitioner to argue as it has, it is silently requesting that *McCartin*, a unanimous decision

[14] *See* NEVADA REV. STAT. § 616.525 (1979) discussed in *Thomas*, 448 U.S. at 271 n.21, as apparently the only statute to exclude remedies in other states. *See also Thomas*, 448 U.S. at 275 n.22 and 4 A. Larson, *Workmen's Compensation Law* § 85.40 n.42 (1983) for citations to the many cases permitting supplemental workers' compensation awards.

of this Court, be overruled and that *Magnolia*, a five-to-four decision, control all efforts at supplemental workers' compensation awards. As argued in the previous section of this Brief, whether or not *McCartin's* rationale is proper, its result conforms to the reality of the nature of worker's compensation proceedings. Furthermore, it must be observed that a return to the rigid rule of *Magnolia* will have the effect of declaring unconstitutional the laws and judicial doctrines of the many states whose statutes or opinions authorize the granting of supplemental awards.[15]

Respondent acknowledges that each of the opinions in *Thomas* had at least some criticism of *McCartin*. Perhaps that criticism is warranted insofar as *McCartin* (and *Magnolia* before it) attempted to analyze the problem of supplemental workers' compensation awards under a full faith and credit analysis. Cannot it be stated quite simply that a state gives full faith and credit to the prior workers' compensation awards of another state when it gives the employer or insurer credit for payments previously made? Is not the Due Process Clause of our Constitution sufficient protection against parochial treatment by one state of another state's workers' compensation laws or rulings (and also against "forum shopping")? As stated by Mr. Justice Black in 1943,

> For more than half a century the power of the states to regulate their domestic economic affairs has been narrowly restricted by judicial interpretation of the federal Constitution. The chief weapon in the arsenal of restriction, only recently falling into disrepute because of overuse, is the Due Process Clause. The Full Faith and Credit Clause, used today to serve the same purposes, is no better suited to control the

[15] *See, e.g.*, O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411]; VA. CODE § 65.1-61 (1980).

freedom of the states.

320 U.S. at 462.[16]

If full faith and credit is to continue as the initial point in reviewing the validity of supplemental worker's compensation awards, Respondent contends that *McCartin* should hold its place as the authoritative precedent on the narrow issue of supplemental workers' compensation awards; accordingly, if a state has not stated expressly that its exclusive remedy statute applies to supplemental remedies sought in other states, the only remaining question is whether or not the application of the law of the second state satisfies the requirements of due process.

II.

GEORGIA HAD SUFFICIENT CONTACT WITH RESPONDENT'S EMPLOYMENT TO SATISFY DUE PROCESS REQUIREMENTS IN ISSUING THE SUPPLEMENTAL WORKERS' COMPENSATION AWARD

Georgia had significant contact with Respondent's employment, and, therefore, could constitutionally apply its substantive law under the principles set forth in *Alaska Packers Association v. Industrial Accident Commission*, 294 U.S. 532 (1935), and *Allstate Insurance Company v. Hague*, 449 U.S. 302 (1981). Respondent's employment contract, under which he worked for Petitioner at the time of his injury, was entered into in Georgia. After the contract was signed, Respondent worked out of Atlanta for four years. Both at the time of the accident and at

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[16] It has been noted frequently that due process and full faith and credit analyses have been identical in deciding choice-of-law cases. *See, e.g., Allstate Ins. Co. v. Hague*, 449 U.S. 302, 308 n.10 (1981); *id.* at 322 n.6 (J. Stewart, concurring).

the time of the hearing, Petitioner was doing business in Georgia and was a self-insured under the Georgia Workers' Compensation Act.

Contrary to Petitioner's suggestion, Respondent always has worked under his original employment contract. When Respondent was injured in 1967 he was given an extended medical leave. In 1971 he was reactivated to working status and transferred to Nashville. There was never any reemployment as Petitioner suggests.[17] Certainly the application of the Georgia Workers' Compensation Act to a company doing business in Georgia and with respect to an employee who was hired in Georgia, is not arbitrary nor does it deny due process of law. The interest of the state in protecting the rights of workers hired in that state is without question.

Petitioner correctly recites the standard stated by the *Hague* plurality to satisfy due process. In order for the forum state to apply its substantive law in a constitutionally permissible manner, it must have a significant contact or aggregation of contacts. 449 U.S. at 308. The mere fact that Respondent was stationed in Nashville after returning from his medical leave does not lessen the interest of Georgia in protecting that employee. In *Alaska Packers*, this Court affirmed California's application of its workers' compensation act to a non-resident who was hired in California to work in Alaska. The Court stated:

> But where the contract is entered into within the state, even though it is to be performed elsewhere, its terms, its obligations and its sanctions are subject in some measure, to the legislative control of the state. The fact that the contract is to be performed

[17] *See* note 13, *supra*.

> elsewhere does not of itself put these incidents beyond the reach of the power which a state may constitutionally exercise.

294 U.S. at 540-541. Petitioner incorrectly asserts that the inevitable factual distinctions between *Alaska Packers* and the case at bar dictate a different result. While the facts in that case and the case at bar obviously are not identical, the significance given to the employment contract cannot be denied. Furthermore, in *Alaska Packers* the contract was for work exclusively outside of California; in this case, as required by Georgia law,[15] Respondent worked in Georgia for at least four years and Petitioner has had a continued and significant presence in Georgia.

The importance of the continued presence of Respondent in Georgia as a self-insured under the Georgia Workers' Compensation Act cannot be ignored. The plurality in *Hague* stated that "[b]y virtue of its presence, Allstate can hardly claim unfamiliarity with the laws of the host jurisdiction and surprise that the state courts might apply forum law to litigation in which the company is involved." 449 U.S. at 317-18. In his concurring opinion, Mr. Justice Stewart stressed the same presence but more in terms of the reasonable expectations of the parties. 449 U.S. at 326-30. In the case at bar, both parties operated in Georgia under the Georgia contract for at least four years; in addition, Petitioner paid workers' compensation benefits to Respondent in Georgia as a result of the 1967 accident which resulted in his lengthy medical leave and it has continued to operate in Georgia as a self-insured under the Georgia Workers' Compensation Act. (P-A-162-172) Petitioner's familiarity with Georgia law is obvious

[15] O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411 (1933)].

and it cannot disclaim reasonable anticipation that Georgia might issue supplemental workers' compensation awards based on a specific provision of the Georgia Workers' Compensation Act.[19]

Petitioner's argument that Georgia's interest in the claimant's employment ended in 1971 when Respondent's base moved to Nashville is incorrect. When Petitioner entered into a Georgia employment contract with Respondent who then went to work in Georgia, the Respondent was vested with an employee's rights under the Georgia Workers' Compensation Act. Petitioner cannot seriously argue that Georgia does not have a continuing interest in seeing that those rights are maintained. The mere transfer of a Georgia employee out of the state should not be enough to take away Georgia's ability to enforce those rights. Obviously Georgia has a vital interest in monitoring benefits paid to employees hired in Georgia. Employers should not be permitted to take advantage of Georgia law by entering employment contracts in the state and then to escape liability under the Georgia Workers' Compensation Act by the transfer of those employees out of the state.

Petitioner has mistakenly relied on the cases of *Home Insurance Company v. Dick*, 281 U.S. 397 (1930), and *John Hancock Mutual Life Insurance Company v. Yates*,

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[19] O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411 (1933)] specifically covers supplemental awards in its last sentence: "If an employee shall receive compensation or damages under the laws of any other state, nothing contained in this Code section shall be construed so as to permit a total compensation for the same injury greater than is provided for in this chapter." The first parts of that code section put Petitioner on notice that Georgia would award benefits for an accident outside of Georgia if the employment contract was made in Georgia and if Petitioner had a place of business in Georgia.

299 U.S. 178 (1936), for the proposition that the application of Georgia law under O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411 (1933)] was unconstitutional. While it is true that in *Dick* and *Yates* the Court found significant contact did not exist, these cases are not applicable here. As pointed out in *Hague*, *Dick* and *Yates* considered the situation where a foreign state had only an insignificant contact with the parties in the occurrence or transaction. In *Dick* the only contact with the State of Texas was nominal residence. All acts related to the making of the subject policy were done in Mexico, the risk was located in Mexico and no performance in Texas was anticipated. Under those circumstances, this Court found that it was a denial of due process to use Texas law to escape the period of limitations contained in the contract. Similarly, in *Yates* the only contact with Georgia was a post occurrence change of residence; all of the other contacts with the insurance contract sued on were with New York. Under those circumstances, the Court found that due process had been violated by the application of Georgia law. In the instant case, the contract under which Respondent's employment existed was entered into in Georgia, he worked in Georgia for four years, and it was only during his lengthy medical leave that he reluctantly transferred to Nashville, Tennessee. Thus, nothing in the reasoning in either *Dick* or *Yates* suggests that due process would be violated by the Georgia courts' application of the Georgia Workers' Compensation Act in the instant case. Georgia had significant contacts and the requirements of the Due Process Clause have been met.

CONCLUSION

Georgia's State Board of Workers' Compensation gave full faith and credit to the prior Tennessee Workers' Compensation agreement by giving Petitioner credit for past payments; the Full Faith and Credit Clause did not preclude Georgia's supplemental award. In addition, the requirements of the Due Process Clause were satisfied by Georgia's significant contacts with the parties and their employment relationship. For these reasons, Respondent respectfully requests that the decision of the Court of Appeals of Georgia be affirmed.

NEELY & PLAYER, P.C.

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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

ROADWAY EXPRESS, INC.,
Petitioner,

V.

LAWRENCE G. WARREN,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

SUPPLEMENTAL BRIEF OF RESPONDENT

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November 15, 1983

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By letter from the Clerk of the Supreme Court of the United States, the Court has requested supplemental briefs addressing three questions. The first section of this Brief will answer those three questions. The second section will present Respondent's arguments elicited by the Court's third question.

QUESTIONS AND RESPONSES

Question 1:

Did the original compensation agreement between Petitioner and Respondent receive judicial approval in accordance with TENN. CODE ANN. § 50-6-206?

Response 1:

No. The record contains no evidence of judicial approval of the original compensation agreement which was entered into in Tennessee. In addition, Respondent states that there was no such judicial approval. Furthermore, Respondent has conferred with Petitioner who agrees that there was no such judicial approval.

Question 2:

Has Petitioner secured any final judgment against Respondent from any Tennessee Court?

Response 2:

No. The only judicial action commenced by either party is Petitioner's Complaint which seeks "a determination as to whether it has any further responsibilities under the Workmen's Compensation Act of the State of Tennessee for further compensation or as an alternative to be dismissed from any further benefits under the Workmen's Compensation Act of the State of Tennessee." (J-A-30-33) Respondent has confirmed with Petitioner that no judgment has been entered in that action which was instituted by Petitioner after unilateral suspension of Tennessee benefits.

Question 3:

Is the mere acceptance of compensation pursuant to

an unapproved agreement filed with the Tennessee Department of Labor sufficient to render the agreement binding on the parties in Tennessee for purposes of application of the full faith and credit clause?

Response 3:

No. The Court is referred respectfully to the argument and citation of authority set forth *infra*.

ARGUMENT AND CITATION OF AUTHORITY

ACCEPTANCE OF COMPENSATION PURSUANT TO AN UNAPPROVED COMPENSATION AGREEMENT IS NOT SUFFICIENT TO RENDER THE AGREEMENT BINDING FOR THE PURPOSE OF APPLYING THE FULL FAITH AND CREDIT CLAUSE

Respondent has demonstrated in its main brief that the Full Faith and Credit Clause does not bar the subject Georgia proceedings regardless of either the nature of the Tennessee proceedings or the alleged effect of Tennessee's exclusive remedy statute. Questions posed by this Court in its request for supplemental briefs have alerted Respondent to an additional reason against applying the Full Faith and Credit Clause.

In *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), this Court was faced with a situation in which an employee sought Louisiana Worker's Compensation benefits after having received a Texas award which had become "final in accordance with the terms of the Texas statute." *Id.* at 433. The majority in *Magnolia* applied

the Full Faith and Credit Clause because "we can perceive no tenable ground for saying that a compensation award need not be given the same effect as res judicata in another state as it has in the state where rendered." *Id.* at 441. Additionally, the Court stated: "And if the award of compensation in Texas were not res judicata there, full faith and credit would, of course, be no bar to the recovery of an award in another state." *Id.* at 443.[1]

In the case at bar, Tennessee law demonstrates that there has been no agreement, award, proceeding or judgment to which either res judicata or full faith and credit applies. TENN. CODE ANN. § 50-6-206 (1983) [formerly codified at TENN. CODE ANN. § 50-1006 (1977)] reads, in relevant part, as follows:[2]

> The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court or of the chancery court or criminal court of the county where the claim for compensation is entitled to be made.

This statute applies not only to "settlements" in the broad sense of that word, but also to agreements identical to the one in the case at bar.

In *Moore v. Hines*, 170 Tenn. 456, 95 S.W.2d 928 (1936), the employee had been receiving weekly compensation benefits after he and his employer's insurance carrier had entered into an agreement virtually identical to the agreement between Respondent and Petitioner.

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[1] *See also Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 292 (1980) (Rehnquist, J., dissenting) ("The present case involves an enforceable *judgment* entered by Virginia after adjudicatory proceedings.")

[2] The quoted language is identical in both the 1983 and 1977 Tennessee codes.

The agreement in the *Moore* case is set out on page 1a of the Appendix to this Brief; the agreement between Petitioner and Respondent is set out at pages 28-29 of the Joint Appendix. Neither of these agreements purport to be lump sum settlements of the entire worker's compensation claim. Nevertheless, the Tennessee Supreme Court in *Moore* cited the predecessor statute to TENN. CODE ANN. § 50-6-206, noted that the agreement had not been approved by a court, and held that "[i]t was accordingly not binding on the insurer, employer, nor the employee." 95 S.W.2d 931.

With there being no award, proceeding, or judgment to which the theory of res judicata might attach, the Full Faith and Credit Clause did not bar the State of Georgia from granting supplemental worker's compensation benefits to Petitioner even under the narrow constraints of *Magnolia*.[3]

Respondent anticipates that Petitioner will argue that, despite the lack of an approved agreement, the Georgia courts must give full faith and credit to Tennessee's "exclusive remedy" statute as applied by the Tennessee

[3] Additional support for this argument might also be found in TENN. CODE ANN. § 50-6-205(d) (1983) [formerly codified at TENN. CODE ANN. § 50-1005 (1977)]. That statute provides that if payments are made without an award, the employer may controvert liability by filing a notice within fifteen (15) days of the due date of the first omitted payment. Said statute goes on to read as follows:

> In such cases the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; *nor shall the acceptance of compensation by the employee be considered a binding determination of his rights.*

(emphasis added) Respondent has been unable to find any judicial interpretation of this statute.

courts. Respondent has countered those arguments in its earlier brief;[4] the lack of an approved agreement further negates this line of argument by Petitioner. Petitioner earlier has referred to his interpretation of Tennessee's "exclusive remedy" statute and the Tennessee case law as Tennessee's "irrevocable election doctrine." [5] Assuming, *arguendo*, that Tennessee has such a doctrine, it strains reason to believe that a Tennessee court would apply that doctrine to a situation where the "election" – respondents' signing the agreement – was a nullity. *Moore v. Hines*, *supra*, and those Tennessee cases dealing with unapproved lump sum settlements demonstrate that the Tennessee courts are implacable in their refusal to give effect to unapproved agreements.[6]

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[4] *See* Brief of Respondent, pp. 13-16.

[5] Petition for Writ of Certiorari to the Supreme Court of Georgia, No. 82-1367, pp. 8-9.

[6] *See, e.g., Sherlin v. Liberty Mutual Ins. Co.*, 584 S.W.2d 455 (Tenn. 1979); *Gross v. National Health Enterprises, Inc.*, 582 S.W.2d 379 (Tenn. 1979).

CONCLUSION

The compensation agreement signed by Respondent is the very foundation upon which all of Petitioner's arguments are built. Because that agreement was not approved by a Tennessee court, there is absolutely nothing to which the Full Faith and Credit Clause might be applied.

Respondent respectfully urges the Court either to dismiss Petitioner's writ of certiorari as improvidently granted or, upon consideration of the merits, to affirm the decision of the Court of Appeals of Georgia.

Respectfully submitted,

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November 15, 1983

APPENDIX

"Memorandum of Agreement to Pay Compensation under 'Workmen's Compensation Act' of Tennessee

"In re: George Moore, Employer

"A. G. Hines, Employe.

"This Agreement, made and entered into this 24th day of September, 1930, by and between A. G. Hines and Union Indemnity Company that in settlement of compensation for injury sustained by A. G. Hines on or about the 26th day of August, 1930, while in the service of George Moore by an accident arising out of and in the course of said employment,

"The said A. G. Hines shall receive compensation at the rate of $9.58 per week, the same being 50 per cent of his average weekly wages as computed according to terms of the 'Workmen's Compensation Act of Tennessee,' and that said compensation shall be payable from 3rd day of September, 1930, until terminated in accordance with the provisions of said Act, as for a total of ____ weeks.

"It is herewith stated as an essential part of this Memorandum of Agreement, that its terms and provisions are in full accord with Section 7, 27, and 35 of the 'Workmen's Compensation Act' of Tennessee."

After the signatures on the agreement appears the following:

"Note: This agreement is subject to approval and review by the Judge of the Circuit Court of the County in which the claim arises, a copy to be forwarded to State Department of Labor, Division of Workmen's Compensation, Nashville, Tennessee."

Moore v. Hines, 95 S.W.2d 928, 929 (Tenn. 1936).